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## SUPREME COURT OF THE UNITED STATES

## No. 826.

EDWARD LANGE, PLAINTIFF IN ERROR,

vs.

CHARLES L. BENEDICT.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

**FILED OCTOBER 8, 1878.**

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1 STATE OF NEW YORK:

COURT OF APPEALS, CLERK'S OFFICE,
*Albany, September* 26, 1878.

I, Edwin O. Perrin, clerk of the court of appeals of the State of New York, do hereby certify that the annexed is a true copy of the record and of all proceedings in the case of Edward Lange vs. Charles L. Benedict.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Albany, this 26th day of September, A. D. 1878.

[SEAL.] F. S. PERRIN,
*Deputy Clerk of Court of Appeals.*

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the court of appeals of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said the court of appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Edward Lange, plaintiff, and Charles L. Benedict, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; or wherein full faith and credit was not given to the public acts, records, and judicial proceedings of another State, to wit, the United States of America, a manifest error hath happened, to the great damage of the said Edward Lange, as by his complaint appears: we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice
3 done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable M. R. Waite, Chief Justice of the said Supreme Court, the 2d day of September, in the year of our Lord one thousand eight hundred and seventy-eight.

Issued.

[SEAL.] JOHN I. DAVENPORT,
*Clerk of the Circuit Court of the United States for the Southern District of New York.*

Allowed by—

[SEAL.] S. E. CHURCH,
*Chief Judge of the Court of Appeals of the State of New York.*

(Indorsed:) U. S. Supreme Court. Edward Lange, plaintiff in error, against Charles L. Benedict, defendant in error. Writ of error. Arnoux, Ritch & Woodford, attorneys for plaintiff in error, 32 Park Place, New York City.

4 The United States of America to Charles L. Benedict, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of New York, in said State, wherein Edward Lange is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Sanford E. Church, chief judge of the court of appeals of the State of New York, this 11th day of August, in the year of our Lord one thousand eight hundred and seventy-eight.

S. E. CHURCH.

(Indorsed:) U. S. Supreme Court. Edward Lange, plaintiff in error, against Charles L. Benedict, defendant in error. Citation. Arnoux, Ritch & Woodford, attorneys for plaintiff in error, 32 Park Place, New York City.

Due service of a copy of the within is hereby admitted.
New York, Sept. 24th, 1878.

TRACY & CATLIN,
*Attorneys for C. L. Benedict.*

5 Know all men by these presents that we, Edward Lange, R. W. Smith, and Edw. Taylor, are held and firmly bound unto Charles L. Benedict, of the city of Brooklyn, county of Kings, and State of New York, in the full and just sum of three hundred dollars, to be paid to the said Charles L. Benedict, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-first day of September, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas lately at the court of appeals of the State of New York, in a suit depending in said court between Edward Lange, of the city and county and State of New York, and the said Charles L. Benedict, above mentioned, a judgment of affirmance of the judgment of the supreme court of said State sustaining the demurrer of said Benedict to the complaint of said Lange, was rendered against the said Edward Lange, in said suit, and the said Edward Lange having obtained a writ of error and filed a copy thereof in the clerk's office of the said court of appeals to reverse the said judgment in the aforesaid suit, and a citation directed to the said Charles L. Benedict, citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Edward Lange shall prosecute his writ of error to effect and answer all

costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

EDWARD LANGE. [L. S.]
R. W. SMITH. [L. S.]
EDW. TAYLOR. [L. S.]

Sealed and delivered in the presence of—
WM. H. RIBLET.

Approved by—

S. E. CHURCH,
*Ch. J. Court of Appeals.*

6 STATE OF NEW YORK,
*City and County of New York, ss:*

On this twenty-first day of September, in the year one thousand eight hundred and seventy-eight, before me personally came Edward Lange, Robert W. Smith, and Edward Taylor, known to me to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged that they executed the same.

WM. H. RIBLET,
*Notary Public No.* 1, *City and County of New York, 3rd ave. cor. 9th st.*

(Indorsed:) Court of appeals. Edward Lange against Charles L. Benedict. Copy. Bond. Arnoux, Ritch & Woodford, attorneys for pl'ff in error, 32 Park Place, New York City.

7 Court of appeals.

EDW'D LANGE, APP'L'T,
*ag'st*
CHAS. L. BENEDICT, RESP'T.

LANGE *v.* BENEDICT.

W. H. Arnoux, for appellant.
B. F. Tracy, for respondent.

FOLGER, J.:

The plaintiff has brought an action against the defendant for false imprisonment and detention in prison. He alleges that it was wrongful and willful, without just cause or provocation. He does not allege that it was malicious or corrupt. The complaint in the action sets out the facts in extenso, upon which the plaintiff relies. To this the defendant has demurred, stating three causes of demurrer; but the one cause relied upon is that the complaint does not state facts sufficient to constitute a cause of action. It is well, therefore, to state with some particularity the facts which are alleged, or are conceded.

In October, 1873, the defendant was judge of the district court for the United States of the eastern district of New York. As such, by virtue of an act of Congress, he presided at and held the circuit court of the United States for the southern district of New York for the October term of that year.

The plaintiff was at that term arranged upon an indictment of twelve counts, the general purport of which was that he had stolen, embezzled or appropriated to his own use certain mail-bags, the property of the United States, of the value of $25; he was tried upon the indictment; the verdict of the jury was, generally, that the plaintiff was guilty, and that the value of the mail-bags was less than $25.

He was indicted under an act of Congress which declared the offense and affixed the punishment. By that act, if the value of the mail-bags taken was found to be less than $25, the punishment for the offense was a fine of $200, or imprisonment for one year.

The defendant, sitting as such judge, and holding that court at that term, passed judgment upon the plaintiff and sentenced him to pay a fine $200, and to be imprisoned for one year.

It is manifest that the punishment thus imposed was more than that affixed to the offense by the act of Congress.

The plaintiff paid to the clerk of the United States circuit court, intending it in full payment of the fine so imposed, the sum of $200. This was done on the 4th day of November, 1873, and during the same term of the court, and the clerk made certificate that that sum was then on deposit in the registry of that court.

The clerk paid the money into the office of the assistant treasurer of the United States at New York City, in that circuit, to the credit of the Treasurer of the United States, as the fine thus imposed.

There is no direct allegation in the complaint that the plaintiff was imprisoned under that sentence. There is an allegation that during the same term of that court a writ of habeas corpus was granted and returned into that court in which the imprisonment of the plaintiff was made to appear. It may be taken as conceded, however, that plaintiff was actually in prison for the space of five days after the pronouncing of that sentence and before further proceedings were had. At the same term of that court, the defendant sitting and holding that court, and as the judge thereof, on the return of that writ, vacated and set aside the sentence above set forth, and at the same time and as a part of the same judicial act and order, passed judgment anew upon the plaintiff, and resentenced him to be imprisoned for the term of one year. Under this action of the defendant the plaintiff was imprisoned, which is the alleged wrongful imprisonment and detention of him by the defendant. Judicial proceedings were afterward had on behalf of the plaintiff, the end of which was that the Supreme Court of the United States adjudged the resentence above
8 stated to have been pronounced without authority, and discharged the plaintiff from his imprisonment. It does not appear that the defendant was a party to the proceedings in the Supreme Court, or was heard or represented there.

On this state of facts the plaintiff insists that the defendant is liable to him in damages.

The defendant claims that the facts show that all which he did he did as a United States judge, and that the judicial character in which he acted protects him from personal responsibility.

In our judgment the question between the parties is brought to what, in words at least, is a very narrow issue. Did the defendant impose the second sentence as a judge; or, although he was at the moment, of right, upon the bench, and authorized and empowered to exercise the functions of a judge, was the act of resentencing the plaintiff so entirely without judisdiction, or so beyond, or in excess of, the jurisdiction which he then had as a judge, as that it was an arbitrary and unlawful act of a private person? A narrow issue, but not to be easily determined to the satisfaction of a cautious inquirer.

The plaintiff makes a preliminary point, that inasmuch as the complaint avers that the defendant wrongfully and willfully and without jurisdiction falsely imprisoned the plaintiff, that, therefore, as a technical rule of pleading, the demurrer having admitted the allegations of

the complaint, there must be judgment for the plaintiff. But the complaint does not rest satisfied with that general allegation. It rests the general allegation upon the special circumstances afterward set forth in it, and which are made up of all, or nearly all, the facts which we have above recited. So we have to consider them as well as the general allegation, and to treat the general allegation as no broader or more effectual than the special circumstances upon which the complaint rests it.

There are not many topics in the law which have received more discussion and consideration than that of the liability of a person holding a judicial or quasi judicial office to an action at law for an act done by him while at the same time exercising his office. The principles which should govern such action are, therefore, well settled. The difficulty in satisfactorily disposing of a particular case is not in finding the rule of law upon which it is to be decided, but in determining on which side of that rule the facts of the case do lie. The general rule, which applies to all cases, and which is to be observed in this, has been in olden time stated thus: Such as are by law made judges of another shall not be criminally accused or made liable to an action for what they do as judges; to which the Year Books (43 Edw. III, 9; 9 Edw. IV, 3) are cited in Floyd v. Baker (12 Coke, 26). The converse statement of it is also ancient; where there is no jurisdiction at all there is no judge, the proceeding is as nothing. Perkins v. Proctor (2 Wils., 382–4), citing the Marshalsea case (10 Coke, 65–76), which says: "Where he has no jurisdiction, non est judex." It has been stated thus, also: "No action will lie against a judge acting in a judicial capacity for any errors which he may commit in a matter within his jurisdiction. (Gwynn v. Pool, Lutw., 937–1160.) It has been, in modern days, carried somewhat further, in the terms of the statement: Judges of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously and corruptly. (Bradley v. Fisher, 13 Wall., 351.)

It is to be seen that in these different modes of stating the principle there abides a qualification. To be free from liability for the act, it must have been done as judge, in his judicial capacity; it must have been a judicial act. So it always remains to be determined when is an act done as judge in a judicial capacity?

And this is the difficulty which has most often been found in the use of this rule, and which is present here: to determine when the facts exist which call into play that qualification. For it is plain that the fact that a man sits in the seat of justice, though having a clear right to sit there, will not protect him in every act which he may choose or chance to do there. Should such an one, rightfully holding a court for the trial of civil actions, order the head of a bystander to be stricken off, and be obeyed, he would be liable. Thus, a person in the office of judge of the ecclesiastical court in England excommunicated one for refusing to obey an order made by him, that he become guardian ad litem for an infant son; and though the order was made in a matter then lawfully before the court for adjudication, and of which he, as judge, had jurisdiction, he was held liable to an action. (Beaurain v. Sir William Scott, 3 Campb., 388.) He had not, as judge, jurisdiction of the person to whom he addressed the order. On the other hand, one rightfully holding a court for the trial of a criminal action, fined and imprisoned a juror, for that he did not bring in a verdict of guilty against

one on trial for an offense after the court had directed the jury
9 that such a verdict was according to the law and facts. The juror was discharged from imprisonment on habeas corpus brought in his behalf; and it was held that the act of fining and imprisoning him was unlawful, inasmuch as there was no allegation of corruption or like bad conduct against the juror. The juror then brought action against him who sat as judge and made the order for the fine and imprisonment, but took nothing thereby; for it was held that the judge acted judicially, as judge, as he had jurisdiction of the person of the juror, and jurisdiction of the subject-matter, to wit, the matter of punishing jurors for misbehavior as such; and that his judgment, that the facts of that case warranted him in inflicting punishment, was a judicial error to be avoided and set aside in due course of legal proceedings, for which, however, he was not personally liable. (Hammond v. Howell, recorder of London, 2 Mod., 218; Bushell's case, Vaughn, 135.) So, a judge of oyer and terminer was protected from indictment, when he had made entry of record that some were indicted for felony before him, whereas, in fact, they were indicted for trespass only. (12 Coke, 25.)

Thus it appears that the test is not alone that the act is done while having on the judicial character and capacity; nor yet is it alone that the act is not lawful.

We have seen, too, that the test is not that the act was in excess of jurisdiction, or alleged to have been done with malice and corruptly; for even if it is such an act, it does not render liable the doer of the act, if he be a judge of a court of general or superior authority. (Bradley v. Fisher, supra.)

We think it clear that there is no liability to civil action if the act was done "in a matter within his jurisdiction," to use the words of Gwynn v. Pool, supra. Those words mean that when the person assumed to do the act as judge, he had judicial jurisdiction of the person acted upon, and of the subject-matter as to which it was done. Jurisdiction of the person is when the citizen acted upon is before the judge, either constructively or in fact, by reason of the service upon him of some process known to the law, and which has been duly issued and executed. What is meant by jurisdiction of the subject-matter we have had occasion to consider lately in Hunt v. Hunt, decided 29th January, 1878. It is not confined within the particular facts which must be shown before a court or a judge to make out a specific and immediate cause of action. It is as extensive as the general or abstract question which falls within the power of the tribunal or officer to act concerning. Our idea will be illustrated by a reference to Groenwelt v. Burwell (1 Ld. Raym., 454). There the defendants, as censors of a college of physicians, had imposed punishment on the plaintiff for what they adjudged was malpractice by him. He brought his action. They pleaded the charter of the college, giving them power to make by-laws for the government of all practitioners in medicine in London, and to overlook them, and to examine their medicines and prescriptions, and to punish malpractice by fine and imprisonment; that they had, in the exercise of that power, adjudged the plaintiff guilty of mala-praxis, and fined him £20 and ordered him imprisoned twelve months, nisi, etc. It was held that the defendants had "jurisdiction over the person of the plaintiff, inasmuch as he practiced medicine in London, and over the subject-matter, to wit, the unskillful administration of physic." That is the language of Holt, C. J., in that case. And because the defendants had power to hear and punish, and to fine and imprison, it was held that they were judges of record, and

because judges, not liable for the act of fining and imprisoning. See, also, Ackerly v. Parkinson (3 Maule & Selw., 411). It is the general abstract thing which is the subject-matter—the power to inquire and adjudge whether the facts of each particular case make that case a part of an instance of that general thing; that power is jurisdiction of the subject-matter. Thus, in Hammond v. Howell, supra, the defendant was saved from liability to civil action, inasmuch as he had as judge jurisdiction of the subject-matter, of punishing jurors for a misdemeanor upon the panel. He made an error in deciding that the facts of that case made an instance of that subject-matter. But the jurors were within his jurisdiction of their persons; and he had jurisdiction of the subject matter, and his error was a judicial error, an act done quatenus judge, not an act as Howell the private person, though it was an act contrary to law, grievous and offensive upon the citizen.

The inquiry, then, at this stage of our consideration of the case, is this: whether the defendant, sitting upon the bench of the circuit court, and being on that occasion de jure et de facto the circuit court, and having, as such, jurisdiction of all persons by law within the power of that court, and jurisdiction of all subject-matters within its cognizance, whether he had jurisdiction of the person of the plaintiff, and of any subject matter wherefrom he had authority to hear and adjudge, whether the facts in the case of the plaintiff, as then presented to him, fell within any of those subject-matters. It is not the inquiry whether the act then done, as the act of the court, was erroneous and illegal; that is but another form of saying whether it could or could not be lawfully done, as a court, by the person then sitting as the judge thereof. It is whether that court then had the judicial power to consider and pass upon the facts presented, and to determine and adjudge that such an act, based upon them, would be lawful or unlawful.

That the defendant, as that court, had jurisdiction of the person of plaintiff is manifest. He was before it on a return to a writ of habeas corpus sued out by him, and was produced in court by the marshal, to whom the writ was sent. He was in the custody of law, upon a judgment and sentence of that court; the validity of which he was questioning, and seeking from that court a vacating and annulling thereof. At least, until the order for vacating it was made, the plaintiff was lawfully within the power of the court.

That court also had jurisdiction of the subject-matter. It might, by law, indict and try persons charged with stealing and appropriating mail-bags; it might pass sentence upon them, when duly convicted, of fine or imprisonment, during the same term of the court at which one sentence had been imposed; it might vacate it or modify it as law and justice would require. Ex parte Lange (18 Wall., 163.) If it had imposed a sentence greater than that prescribed by law, it could vacate it and inflict one in accord with the law; if no part of the invalid sentence imposed had been executed, it could vacate it and inflict one different in kind or degree. Id.; Miller v. Finkle (1 Park. Cr., 374, and cases cited there). In England it has been held that at the same term the judgment might be altered, and, by reason of subsequent conduct of the convicted person, the punishment be increased (Reg. v. Fitzgerald, 1 Salk., 401); and another sentence has been given after a portion of the former one had been suffered. (Rex v. Price, 6 East, 323.) The judgment, as expressed in the prevailing opinion in Ex parte Lange, supra, is not in accord with those two cases, and we cite them without expression of approval or otherwise. This was the subject-matter, the general matter, then before the court. The particular matter, or question, pre-

sented was the sentence of fine and imprisonment passed upon the plaintiff; was it erroneous and unlawful in that it went beyond the limit of the law, he having been some days in imprisonment under it, and having paid a sum of money equal in amount to the fine to the clerk of the court, who in turn had paid it to an officer of the United States Government; was it lawful to vacate the sentence if in excess of the law; if that sentence should be vacated, was it lawful, under the facts of the case, to impose another sentence which should be in accord with the statute; did all these things present a case for the exercise of power, by virtue of the jurisdiction over the subject-matter? The court, we have seen, had the jurisdiction last named; did it not also have jurisdiction to adjudicate upon that state of facts? If it did have it, and did adjudicate erroneously, was it not a judicial error, to be relieved from by such writ as would bring it up for review, rather than a wrong done personally to be answered for in a civil action? Is not the person who filled the office of judge, and by his presence on the bench, made that court free from liability for that adjudication, though the act done by him was erroneous and unauthorized by law?

It was held by this court in Roderigas v. East River Savings Bank (63 N. Y., 460) that where general jurisdiction is given to a court of any subject, and that jurisdiction in any particular case depends upon facts which must be brought before that court for its determination upon the evidence, and where it is required to act upon such evidence, its decision upon the question of jurisdiction is conclusive until reversed, so far as to protect its officers and all other innocent persons who act upon it. How does it differ when general jurisdiction is thus given, and depends upon the legal conclusion from a conceded state of facts, and when the court is required to act thereon and draw a conclusion therefrom? Is not the adjudication of that court conclusive until reversed, so as to protect? Is not the act of adjudication and the judgment given thereon, an act done with jurisdiction, hence, a judicial act; an act done as a judge, or as a court? In Howell's case, supra, there was no disputed question of fact. It was upon a conceded state of facts that he acted. He erred in his judgment of the effect in law of those facts, yet it was deemed a judicial error.

It is true that the United States Supreme Court, upon a certain state of facts before it, and in a proceeding by certiorari, to which this defendant was not a party, and in which he was not heard by that court, reached the conclusion that the second sentence of the circuit court was pronounced without authority, and discharged the plaintiff from
11 his imprisonment thereunder. (Ex parte Lange, supra.) In the prevaling opinion given in the case are repeated expressions to the effect that the power of the circuit court to punish, further than the first sentence, was gone; that its power to punish for that offense was at an end when the first sentence was inflicted and the plaintiff had paid the $200 and laid in prison five days; that its power was exhausted; that its further exercise was prohibited; that the power to render any further judgment did not exist; that its authority was ended.

It is claimed from these expressions that the force of the decision in that case is that the defendant in pronouncing the second sentence upon the plaintiff did not act as a judge. It is plausible to say that if an act sought to be defended as a judicial act has been pronounced without authority and void, it could not have been done judicially. But we have yet to learn that the eminent court which used that language in adjudging upon the case made upon that writ would hold that the defendant did not act as a judge in pronouncing the judgment,

which was deemed without power to sustain it. The opinion also says: "A judgment may be erroneous and not void, and it may be erroneous because it is void. The distinctions between void and voidable judgments are very nice, and they may fall under the one class or the other, as they are regarded for different purposes." We do not think that learned court would disregard the reasoning of Howell's case, supra, and others like unto it. Yet in Bushell's case, supra, he was discharged on habeas corpus, on the ground that Howell, as judge, had no power or authority to fine or imprison him for the cause set up; it was called "a wrongful commitment"; 1 Mod., 184; as contrasted with "an erroneous judgment"; 12 Mod., 381, 392; and yet, when Howell was called to answer in a civil action for the act, it was held that, though without authority, it was judicial. In Bushell's case (1 Mod., 119), Hale, C. J., said: "The habeas corpus and the writ of error, though it doth make the judgment void, doth not make the awarding of the process void to that purpose," i. e., of an action against the judge; "and the matter was done in a court of justice," he continued. So is the comment upon that case, Yates v. Lansing (5 Johns., *290); "it had jurisdiction of the cause because it had power to punish a misdemeonor in a juror, though in the case before the court the recorder made an erraneous judgment in considering the act of the juror as amounting to a misdemeanor, when in fact it was no misdemeanor." (2 Mod., 218.)

So in Ackerly v. Parkinson, supra, the defendant was held protected, though the citation issued by him was considered as a nullity, on the ground that the court had a general jurisdiction over the subject-matter.

Let it be conceded, at this point, that the law is now declared, that the act of the defendant was without authority and was void; yet it was not so plain, as then to have been beyond the realm of judicial discussion, deliberation, and consideration, as is apparent from the fact that four judges, other than the defendant, acting as judges, have agreed with him in his view of the law.

He was in fact sitting in the place of justice; he was at the very time of the act a court; he was bound by his duty to the public, and to the plaintiff, to pass, as such, upon the question growing out of the facts presented to him, and as a court to adjudge whether a case had arisen in which it was the demand of the law that on the vacating of the unlawful and erroneous sentence or judgment of the court, another sentence or judgment could be pronounced upon the plaintiff. So to adjudge was a judicial act done as a judge, as a court, though the adjudication was erroneous, and the act based upon it was without authority and void. Where jurisdiction over the subject is invested by law in the judge, or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other involved in the case, although upon the correctness of his determination in those particulars the validity of his judgment may depend. Ackerly v. Parkinson, supra. For such an act a person acting as judge therein is not liable to civil or criminal action. The power to decide protects, though the decision be erroneous. (See Garnett v. Farrand (6 B. & C., 611.)

There is another view of this case. It is certain that the defendant, as the circuit court, had at first jurisdiction of the plaintiff, and jurisdiction of the cause and of the proceedings. That jurisdiction continued to and including the pronouncing of the first sentence; nay, until and including the giving of the order vacating that sentence. If it be admitted that, at the instant of the utterance of that order, jurisdiction ceased, as is claimed by the plaintiff, on the strength of the opinion in

Ex parte Lange, supra, as commented upon; Ex parte Parks (93 U. S. R., 18), and that all subsequent to that was coram non judice and void, still it was so, not that the court never had jurisdiction, but that the
12 last act was in excess of its jurisdiction. Thus in the opinion, Ex parte Lange, supra, p. 165, it was said that the facts very fairly raised the question whether the circuit court, in the sentence which it pronounced, and under which the prisoner was held, had not exceeded its powers. (See, also, page 174.) We think that the whole effect of the opinion is, not that the court had no jurisdiction, no power over the prisoner and the case, but that it had no authority to impose further punishment; "all further exercise of it, in that direction, was forbidden," p. 178. What is an act in excess of judicial authority is shown by Clarke v. May (2 Gray, 410). There, a justice of the peace, having jurisdiction of a case, summoned a person to appear before him as a witness therein. That person disobeyed. The case was tried and ended. Thereafter the justice issued process to punish for contempt the person summoned as a witness. He was arrested, fined, and not paying, was committed. It was held that the power to punish for contempt was incidental to the power to try the main case; that when the latter was ended, jurisdiction had ceased, and the power to punish for contempt no longer existed, and that the proceedings had to that end were in excess of jurisdiction, and the justice was liable. And the distinction between a case where the magistrate acts with no jurisdiction at all, and one where his act is beyond or in excess of his jurisdiction, is shown by the case last cited, and that of Piper v. Pearson, in the same volume, page 120.

This act of the defendant was then one in excess of or beyond the jurisdiction of the court.

And though, when courts of special and limited jurisdiction exceed their powers, the whole proceeding is coram non judice and void, and all concerned are liable, this has never been carried so far as to justify an action against a judge of a superior court, or one of general jurisdiction, for an act done by him in a judicial capacity. (Yates v. Lansing, supra; Bradley v. Fisher, supra; Randall v. Brigham, 7 Wall., 523) In the last cited case it is said of judges of superior courts: They are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, unless, perhaps, they are done maliciously or corruptly; page 536, 537. And in the other cases a distinction is observed and insisted upon, between excess of jurisdiction and a clear absence of all jurisdiction over the subject-matter. And to the same effect is this: "For English judges, when they act wholly without jurisdiction * * * have no privilege." (Per Parke, B., Calder v. Holket, 3 Moore's P. C. C., 28, 75.)

Now it may be conceded that the circuit court is not a court of general jurisdiction; that in a sense it is a court of limited and special jurisdiction (Kempe's Lessee v. Kennedy, 5 Cranch, 173), inasmuch as it must look to the acts of Congress for the powers conferred. But it is not an inferior court. It is not subordinate to all other courts, in the same line of judicial function. It is of intermediate jurisdiction between the inferior and supreme courts. It is a court of record; one having attributes and exercising functions independently of the person of the magistrate designated generally to hold it. (Per Shaw, C. J., Ex parte Gladhill, 8 Metc. 168, 170.) It proceeds according to the course of the common law; it has power to render final judgments and decrees which bind the persons and things before it, conclusively, in criminal as well as civil cases, unless revised on error or appeal. (Grignon's Lessee

v. Astor, 2 How. (U. S.), 341. See Ex parte Tobias Watkins, 3 Peters, 193.) "Many cases are to be found wherein it is stated generally that when an inferior court exceeds its jurisdiction, its proceedings are entirely void and afford no protection to the court, the party, or the officer who executes its process. I apprehend that it should be qualified when the subject-matter of the suit is within the jurisdiction of the court, and the alleged defect of jurisdiction arises from some other cause." (Per Marcy, J., Savacool v. Boughton, 5 Wend., 172.) How much more so, when the court is not inferior.

There are analogies in the law. Take the case of a removal of a cause from a State court to the circuit court of the United States. When the party petitioning for a removal has presented his papers in due form and sufficiency to the State court, and has in all respects complied with the terms of the act of Congress, the State court cannot refuse. Though it does, all subsequent proceedings in it are coram non judice. (See Fisk v. U. P. R. R. Co., 6 Blatchf., 362; Matthews v. Leyall, 6 McLean, 13.) Though the judge of the State court has a legal discretion to exercise as to the right of removal (Ladd v. Tudor, 3 Woodb. & M., 325), if the facts entitle to a removal, it may not be withheld; and when they are shown it is the duty of the State court to proceed no further; each step after that is coram non judice. (Gordon v. Longest, 16 Peters, 101.)

Yet, in case a judge did, in the honest exercise of his judgment,
13 refuse a removal and proceed with the case in the State court, would it be contended that he was liable in a civil action? He had jurisdiction of the cause originally. That jurisdiction had ceased. His further acts were beyond or in excess of his jurisdiction.

A plea of title put in in a court of a justice of the peace in accordance with statute ousts of jurisdiction. That court had jurisdiction of the cause originally, and the power to pass upon the sufficiency of the plea and accompanying papers. If it should err, and hold that jurisdiction had not been taken away, when it had, would the magistrate be liable in a civil action—always allowing for the difference in that that court is of limited and special jurisdiction. (See Striker v. Mott, 6 Wend., 465.)

For these reasons we are of the opinion that the defendant is protected by his judicial character from the action brought by the plaintiff.

We have not gone into a written consideration of all the matters urged by the learned and zealous counsel for the plaintiff in his very elaborate and exhaustive brief and printed argument. We have read them with great interest and benefit. To follow them in an opinion, and to comment upon all the cases cited and positions taken, would be to write a treatise upon this subject. That would be no good reason why they should not be followed and discussed, if the requirements of the case demanded it. The case turns upon a question more easily stated than it is determined—was the act of the defendant done as a judge? Our best reflection upon it, aided by the reasonings and conclusions of many more cases than we have cited, has brought us to the conclusion that as he had jurisdiction of the person and of the subject-matter, and as his act was not without the inception of jurisdiction, but was one no more than in excess of or beyond jurisdiction, the act was judicial.

We are not unmindful of the considerations of the protection of the liberty of the person, and of the staying of a tendency to arbitrary exercise of power, urged with so much eloquence by the learned and accomplished counsel for the appellant. Nor are we of the mind of the court in 2 Mod., 218, 220, that "These are mighty words in sound, but nothing to the matter." They are to the matter, and not out of place in such a discussion as this. Nor have we been disposed to outweigh those

20 New York supreme court, city and county of New York.

EDWARD LANGE
*against*
CHARLES L. BENEDICT.

The complaint of the plaintiff, who appears herein by Arnoux, Ritch & Woodford, his attorneys, shows:

That the defendant wrongfully and wilfully, without just cause, provocation, or jurisdiction, falsely imprisoned and caused to be detained in prison the plaintiff, from on or about the 8th day of November, 1873, until on or about the 29th day of January, 1874, whereby the plaintiff was put to great cost and expense, to wit, upwards of ten thousand dollars ($10,000), suffered great loss and damage in and about his business, to wit, upwards of ten thousand dollars ($10,000), and was injured in mind and body and reputation to his damage thirty thousand dollars ($30,000).

That the special circumstances under which said false imprisonment arose are as follows:

First. In the October term, 1873, of the circuit court of the United States, held in the southern district of New York, the Hon. Charles L. Benedict presiding, under an act of Congress passed June 8th, 1872, the plaintiff was arraigned under an indictment, a copy of which is hereto annexed, marked Exhibit No. 1, and is to be taken as part of this complaint; was tried and was convicted, as appears by the verdict of the jury, a copy of which, hereto annexed, is to be taken as part of this complaint, and is marked Exhibit No. 2.

21 Second. On the 3d day of November, 1873, at said term of the said court, the said judge sentenced the plaintiff to pay a fine of two hundred dollars, and to be imprisoned for the term of one year, contrary to the statute in such case made and provided, a copy of which sentence is hereto annexed, marked Exhibit No. 3, and is to be taken as part of this complaint.

Third. On the 7th day of November, 1873, a writ of habeas corpus was duly granted, and on the 8th day of November, 1873, returned in said court, in which the imprisonment of the plaintiff and the payment of the fine in manner and form as shown by the certificates of the clerk and the assistant treasurer, copies of which are hereto annexed, marked Exhibits 4 and 5, and are to be taken as part of this complaint, were made to appear.

Fourth. On the 8th day of November, 1873, and during the said term of said court, after hearing counsel on the return of said writ, the said sentence of the 3d day of November, 1873, was vacated and set aside, and the plaintiff being then and there in court, in the custody of the marshal, on the return of the writ, defendant caused to be made an order, a copy of which is hereto annexed, marked Exhibit No. 6, and is to be taken as part of this complaint, under which the plaintiff was, as heretofore alleged, wrongfully imprisoned.

Fifth. On the 17th day of December, 1873, an order to show cause why writs of habeas corpus and certiorari should not issue was duly granted by his honor Judge Woodruff, returnable before said circuit court, and such proceedings were thereon had that the said court, on the 24th day of December, 1873, denied the motion. A copy of the record of the hearing is hereto annexed, marked Exhibit No. 7, and is to be taken as part of this complaint. Thereupon, for the purpose of preserving the rights of the plaintiff, a writ of habeas corpus was

22 issued by Judge Blatchford, returnable before the defendant on December 29th, 1873, on the return of which an order was made, a copy of which is also annexed, marked Exhibit No. 8, and is to be taken as part of this complaint.

Sixth. On the 13th day of January, 1874, writs of habeas corpus and certiorari were duly granted by the Supreme Court of the United States, and such proceedings were thereon had that the said sentence, pronounced on the 8th day of November, 1873, Exhibit No. 3, under which the plaintiff was held a prisoner from the 8th day of November, 1873, to the 13th day of January, 1874, was adjudged to have been pronounced without authority, and the said Supreme Court thereupon ordered and directed that the plaintiff be discharged, a copy of which order is hereto annexed, marked Exhibit No. 9, and is to be taken as part of this complaint.

Wherefore the plaintiff demands judgment for the sum of fifty thousand dollars ($50,000), together with his costs.

ARNOUX, RITCH & WOODFORD,
*Attorneys for Plaintiff.*

CITY AND COUNTY OF NEW YORK, *ss:*

Edward Lange, being duly sworn, says that he is the plaintiff herein; that he has read the foregoing complaint, and that the same is true to his own knowledge, except as to any matters stated upon information and belief, and as to those matters he believes it to be true.

EDWARD LANGE.

Sworn before me this 26th day of June, 1874.

JOSHUA M. FIERO,
*Notary Public, N. Y. Co.*

23 EXHIBIT No. 1.

Circuit court of the United States of America for the southern district of New York, in the second circuit.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit aforesaid, on the third Wednesday of June, in the year of our Lord one thousand eight hundred and seventy-three, and continued by adjournment to and including the seventh day of October, in the year of our Lord one thousand eight hundred and seventy-three:

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America, within and for the district and circuit aforesaid, on their oath, present that Edward Lange, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and seventy-two, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously steal certain mail bags belonging to the Post-Office Department of the said United States, to wit, fifty of said mail bags, each of the value of fifty cents, against the peace and dignity of the said United States, and against the form of the statute of the said United States in such case made and provided.

SECOND COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present that Edward Lange, late of the city and county of New York, in
24 the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and seventy-three, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously steal certain other mail bags, in use by the Post-Office Department of the said United States, to wit, fifty of said mail bags, each of the value of fifty cents, against the peace and dignity of the said United States, and against the form of the statute of the said United States in such case made and provided.

THIRD COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present that Edward Lange, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and seventy-two, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously embezzle certain mail bags belonging to the Post-Office Department of the said United States, to wit, fifty of said mail bags, each of the value of fifty cents, against the peace and dignity of the said United States, and against the form of the statute of the said United States in such case made and provided.

FOURTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present that Edward Lange, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and seventy-three, at the southern district of New York, and within
25 the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously purloin certain other mail bags belonging to the Post-Office Department of the said United States, to wit, fifty of said mail bags, each of the value of fifty cents, against the peace and dignity of the said United States, and against the form of the statute of the said United States in such case made and provided.

FIFTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present that Frank Lange, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and seventy-two, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously steal certain mail bags belonging to and in use by the Post-Office Department of the said United States, to wit, fifty of said mail bags, each of the value of fifty cents, against the peace and dignity of the said United States, and against the form of the statute of the said United States in such case made and provided.

SIXTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present that Edward Lange, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and seventy-three, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously, and to the hindrance of the public service, and for lucre and gain, appropriate to his own use certain other mail bags belonging to and in
26 use by the Post-Office Department of the said United States, to wit, fifty of said mail bags, each of the value of fifty cents, then and there against the peace and dignity of the said United States, and against the form of the statute of the said United States in such case made and provided.

SEVENTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present that Edward Lange, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the second day of December, in the year of our Lord one thousand eight hundred and seventy-two, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously, and to the hindrance of the public service, and for lucre and gain, convey away certain other mail bags belonging to and in use by the Post-Office Department of the said United States, to wit, fifty of said mail bags, each of the value of fifty cents, then and there against the peace and dignity of the said United States, and against the form of the statute of the said United States in such case made and provided.

EIGHTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present that Edward Lange, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and seventy-two, at the southern district of New York, and within the jurisdiction of this court, did knowingly, unlawfully, and for convenience, appropriate to his own use certain mail bags belonging to and in use by
the Post-Office Department of the said United States, to wit, fifty
27 of said mail bags, each of the value of fifty cents, then and there against the peace and dignity of the said United States, and against the form of the statute of the said United States in such case made and provided.

NINTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present that Edward Lange, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the third day of December, in the year of our Lord one thousand eight hundred and seventy-two, at the southern district of New York, and within the jurisdiction of this court, did knowingly, unlawfully, and for convenience, convey away certain mail bags belonging to and in use by the Post-Office Department of the said United States, to wit, fifty of said mail bags, each of the value of fifty cents, then and there against the peace and dignity of the said United States, and against the form of the statute of the said United States in such case made and provided.

TENTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present that Edward Lange, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and seventy-two, did knowingly, wilfully, unlawfully, and feloniously, and for lucre, gain, and convenience, and to the hindrance and detriment of the public service, appropriate to his own use, and convey away certain mail bags in use by and belonging to the Post-Office Department of the said United States, to wit, fifty of said bags, each of the value of fifty cents, then and there against the peace and dignity of the said United States, and against the form of the statues of the said United States in such case made and provided.

28 ELEVENTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present that Edward Lange, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and seventy-three, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, and feloniously, and for convenience, appropriate to another than its proper use, certain property in use by and belonging to the Post-Office Department of the said United States, to wit, fifty mail bags, each of the value of fifty cents, then and there against the peace and dignity of the said United States, and against the form of the statute of the said United States in such case made and provided.

TWELFTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present that Edward Lange, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and seventy-two, at the southern district of New York, and within the jurisdiction of this court, he, the said Edward Lange, having then and there the charge and custody of certain property in use by and belonging to the Post-Office Department of the said United States, to wit, fifty mail bags, each of the value of fifty cents, then and there did unlawfully, knowingly, and wilfully embezzle said property, to wit, said mail bags, then and there against the peace and dignity of the said United States, and against the form of the statute of the said United States in such case made and provided.

GEORGE BLISS,
*U. S. Attorney.*

29 EXHIBIT No. 2.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on Thursday, the twenty-second day of October, in the year of our Lord one thousand eight hundred and seventy-three:

Present, The Hon. Charles L. Benedict, district judge, presiding.

THE UNITED STATES
*ag'st*
EDWARD LANGE.

This cause being still on trial, the jurors are called and severally answer to their names.

Mr. A. H. Purdy concludes his summing up on part of prosecution.

Charge is thereupon given by the court to the jury, who retire under charge of an officer duly qualified to attend them, and on their return say that they find the prisoner guilty, and the value of the bags to be less than twenty-five dollars, and so they say all.

A copy.

KENNETH G. WHITE,
*Clerk.*

30 EXHIBIT No. 3.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Monday, the third day of November, in the year of our Lord one thousand eight hundred and seventy-three:

Present, the Hon. Charles L. Benedict, district judge, presiding.

THE UNITED STATES OF AMERICA
*ag'st*
EDWARD LANGE.

On motion of the United States district attorney, ordered sentence.

The court thereupon proceeds to pass judgment, and sentence the prisoner, Edward Lange, to be imprisoned for the term of one year, and to pay a fine of $200.

A copy.

KENNETH G. WHITE,
*Clerk.*

31 EXHIBIT No. 4.

United States circuit court.

THE UNITED STATES OF AMERICA
*agst.*
EDWARD LANGE.

NEW YORK, *4th November*, 1873.

Whereas at a stated term of the court for the southern district of New York, held on the third day of November, 1873, Hon. Charles L. Benedict, district judge, presiding, the above-named Edward Lange was sentenced to be imprisoned for the term of one year, and to pay a fine of two hundred dollars:

This is to certify that I have this day received the sum of two hundred dollars in full of the above-mentioned fine so imposed by the said judge, and in full satisfaction of the said sentence, so far as the said fine is concerned, and which said sum is now on deposit in the registry of this court.

In witness whereof I have hereunto subscribed my name and affixed my seal of office the day and year first above written.

[L. S.] KENNETH G. WHITE, *Clerk.*

32 EXHIBIT No. 5.

No. 1270.

OFFICE OF THE U. S. ASSISTANT TREASURER,
*New York, Nov.* 7, 1873.

I certify that Kenneth G. White, clerk of the United States circuit court, southern district New York, this day deposited to the credit of the Treasurer of the United States two hundred dollars, being a fine imposed by said court in a criminal case of United States vs. Edward Lange, for which I have signed triplicate receipts.

$200.

THOMAS HILLHOUSE,
*Assistant Treasurer United States.*

33 EXHIBIT No. 6.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Saturday, the eighth day of November, in the year of our Lord one thousand eight hundred and seventy-three:

Present, the Hon. Charles L. Benedict, district judge, presiding.

THE UNITED STATES
*agst.*
EDWARD LANGE.

Ordered, that the sentence pronounced in the above-entitled cause on the 3d day of November, 1873, be and the same is hereby vacated and set aside.

The court thereupon proceeds to pass judgment anew and resentence the prisoner, Edward Lange, to be imprisoned for the term of one year.

A copy:

KENNETH G. WHITE, *Clerk.*

34 EXHIBIT No. 7.

WEDNESDAY, *December* 24, 1873.

The court meets pursuant to adjournment, and is opened by proclamation.

Present, Judges Woodruff, Blatchford, and Benedict.

THE UNITED STATES
*vs.*
EDWARD LANGE.

The motion for a writ of habeas corpus in the above entitled cause coming on to be heard—

Mr. Wm. Henry Arnoux is heard in favor of motion.

Mr. A. H. Purdy is heard in opposition.

Mr. Wm. Henry Arnoux is heard in reply.

The court, after taking a recess for two hours, denies the motion.

35 EXHIBIT No. 8.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Monday, the 29th day of December, in the year of our Lord one thousand eight hundred and seventy-three:

Present, the Hon. Charles L. Benedict, district judge, presiding.

In the matter, etc., of Edward Lange.

An application having been made by the above-named Edward Lange for the issuing of a writ of habeas corpus, which application has been heretofore, to wit, on the 24th day of December, 1873, heard and denied; but for the purpose of preserving the rights of the said Edward Lange, leave was then granted for the issuing of said writ, which writ, in accordance with such leave, has been issued and returned this day:

36 Now, on reading the return of the United States marshal to said writ, and on hearing Mr. Arnoux in behalf of the petitioner, and Mr. Purdy, assistant United States district attorney, in opposition thereto, and it being conceded that the second sentence was pronounced in the same term of the said court in which the first sentence was pronounced:

It is ordered, that the prisoner be remanded, and the writ be dismissed, pursuant to the opinion of the court delivered on said 24th day of December, 1873.

CHARLES L. BENEDICT.

A true copy:

KENNETH G. WHITE, *Clerk.*

37 EXHIBIT No. 9.

*Petition for writs of habeas corpus and certiorari.*

Supreme Court of the United States. No. 9. Original. October term, 1873.

Ex parte. In the matter of Edward Lange, petitioner.

In the matter of the application for discharge of Edward Lange, ex parte, the writ of habeas corpus, directing the United States marshal for the southern district of New York to produce the body of said Edward Lange before this court and to certify the cause of his detention or imprisonment, having been duly issued and served herein; now the said marshal having produced the body of said Edward Lange and having certified that said Lange is detained in his custody under and by virtue of the sentence of the circuit court of the United States for the southern district of New York, which said sentence is in the following words, viz:

"At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Saturday, the eighth day of November, in the year of our Lord one thousand eight hundred and seventy-three:

"Present, the honorable Charles L. Benedict, circuit judge.

38 THE UNITED STATES
*vs.*
EDWARD LANGE.

"Ordered, that the sentence pronounced in the above entitled cause on the third day of November, 1873, be, and the same is hereby, vacated and set aside.

"The court thereupon proceeds to pass judgment anew and resentence the prisoner, Edward Lange, to be imprisoned for the term of one year."

And the cause of said imprisonment having been duly inquired into by this court upon the return of said writ of habeas corpus and writ of certiorari heretofore issued herein, and counsel having heretofore been heard on behalf of the United States and on behalf of said petitioner, and due consideration having been had, it is hereby ordered and adjudged that the imprisonment of Edward Lange, under said order of said circuit court of the United States in and for the southern district of New York, is without authority of law, and that said Edward Lange is entitled to have his liberty.

Whereupon it is hereby ordered and adjudged that said Edward Lange be, and he hereby is, discharged from said imprisonment.

True copy:

Test. [L. S.] D. W. MIDDLETON,
*Clerk Supreme Court U. S.*

39 Supreme court, city and county of New York.

EDWARD LANGE
*vs.*
CHARLES L. BENEDICT.

The defendant demurs to the complaint herein for the grounds that it appears upon the face of the complaint:

I. That the court has no jurisdiction of the person of this defendant.

II. That the court has no jurisdiction of the subject of this action.

III. That the complaint does not state facts sufficient to constitute a cause of action.

TRACY, CATLIN & BRODHEAD,
*Deft's Att'ys.*

40 At a special term of the supreme court held at the court-house, New York, on the 5th day of January, 1875:

Present, Hon. Charles H. Van Brunt, J.

EDWARD LANGE
*against*
CHARLES L. BENEDICT.

This cause having come on to be heard in due order upon the calendar upon the demurrer interposed by the defendant to the complaint of the plaintiff herein; after hearing Mr. Benjamin F. Tracy, of counsel for the defendant, and Mr. William Henry Arnoux, of counsel for the plaintiff, and due deliberation thereon having been had:

It is ordered that the said demurrer be, and the same is hereby, overruled with costs, with liberty to the defendant to answer within twenty days after a service of a copy of this order, upon payment of said costs.

A copy:

WM. WALSH, *Clerk*

41 N. Y. supreme court, city and county of New York.

EDWARD LANGE
*vs.*
CHARLES L. BENEDICT.

Please take notice that the above-named defendant appeals to the general term of this court in and for the first judicial department from the order entered herein on the fifth day of January, 1875, overruling the demurrer with costs.

Dated January 25, 1875.

TRACY, CATLIN & BRODHEAD,
*Def't's Att'ys.*

To Messrs. ARNOUX, RITCH & WOODFORD,
*Pl'ff's Att'ys.*

WILLIAM WALSH, Esq.,
*County Clerk, etc.*

42 *Opinion.*

New York supreme court, special term.

EDWARD LANGE
*vs.*
CHARLES L. BENEDICT.

At the October term, 1873, of the circuit court of the United States, held in the southern district of New York, the Hon. Charles L. Benedict, the defendant, presiding, the plaintiff was arraigned under an indictment for feloniously stealing certain mail-bags in use by the Post-Office Department of the United States, and was tried and convicted, the jury finding in their verdict that the value of the bags stolen by the defendant was less than twenty-five dollars. The extreme penalty which the statute under which the plaintiff was convicted authorized the court to impose upon him, was that he should be imprisoned for the term of one year or pay a fine of two hundred dollars ($200).

On the 3d day of November, 1873, at said term of the court, the defendant sentenced the plaintiff to pay a fine of two hundred dollars and be imprisoned for the term of one year. On the 4th day of November, 1873, the plaintiff paid to the clerk of the United States circuit court the said fine so imposed, and the clerk duly deposited the same to the credit of the Treasurer of the United States with the assistant treasurer at the city of New York. On the 7th day of November, 1873, a
43 writ of habeas corpus was granted in favor of the plaintiff herein, returnable on the 8th day of November. On said 8th day of November, and during that same term of the court at which the plaintiff was convicted, the plaintiff was produced in obedience to said writ by the marshal, whereupon, after hearing counsel, the defendant by order vacated and set aside the sentence pronounced against the plaintiff on the 3d day of November, 1873, and proceeded to pass judgment anew, and resentenced the plaintiff to be imprisoned for the term of one year.

On the 17th day of December, 1873, an order to show cause why a writ of habeas corpus should not issue, returnable before said circuit court, which motion was on the 24th of December denied. Thereupon, for the purpose of preserving the rights of the plaintiff, a writ of habeas corpus was issued by Judge Blatchford, returnable before the defendant on the 29th day of December, 1873. Upon the return day to this writ, it was ordered that the prisoner be remanded and the writ dismissed.

On the 13th of January, 1874, writs of habeas corpus and certiorari were duly granted by the Supreme Court of the United States, and such proceedings were thereon had that the said sentence, pronounced on the 8th of November, 1873, under which the plaintiff was then being held a prisoner, was adjudged to have been pronounced without authority, and the Supreme Court thereupon ordered and directed that the plaintiff be discharged, and this action was brought to recover damages for false imprisonment from the 8th day of November, 1873, until the 29th of January, 1874.

The defendant demurs to the complaint upon the ground that it does not state facts sufficient to constitute a cause of action.

Mr. B. F. Tracy in support of demurrer.

Mr. Wm. Henry Arnoux opposed.

44 VAN BRUNT, J.:

In the points submitted by the counsel for the defendant, and also upon the argument of the demurrer, it was argued that the second sentence was lawful, and that the judgment of the Supreme Court of the United States upon that point is not binding upon this court.

Although the judgment of the Supreme Court of the United States as to the legality of the second sentence may not conclude the defendant, yet I do not think that it would be decorous in me to attempt to review the deliberate decision of the highest judicial tribunal in the land, and I shall only discuss very briefly the questions raised upon this demurrer, assuming the second sentence to have been without authority.

There is no principle which is better settled, than that no judge of a court of record is liable to action for a judicial act, and although in many of the cases distinctions are made between the liabilities of judges holding courts of limited jurisdicton and those of judges holding courts of superior or general jurisdiction, I do not think it necessary for the decision of this demurrer to determine whether the United States circuit court is to be considered, in respect to this case, as a court of limited or general jurisdiction.

The counsel for the plaintiff has cited several cases (4 Dal., 11; 3 Wheat., 336; 10 Wheat., 192) for the purpose of showing that for some purposes, at least, that court is to be considered a court of limited jurisdiction.

I do not think it necessary to comment upon all the authorities which have been cited by counsel in support of their respective positions, because it seems to me that Mr. Justice Field, in case of Bradley v. Fisher, (13 Wallace, 350), has stated the result to be derived from an examination of all the cases on this subject.

He says "that judges of courts of superior or general jurisdic-
45 tion are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. A distinction must be here observed between excessive jurisdiction and the clear absence of all jurisdiction over the subject-matter. Where there is clearly no jurisdiction over the subject-matter, any authority exercised is an usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. But where jurisdiction over the subject-matter is invested by law in the judge or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in these particulars the validity of

the judgment may depend. Thus, if a probate court, invested only with authority over wills and the settlement of the estate of deceased persons, should proceed to try parties for public offenses, jurisdiction over the subject of offenses being entirely wanting in the court, and this being necessarily known to its judge, his commission would afford no protection for him in the exercise of the usurped authority.

"But if, on the other hand, a judge of a criminal court, invested with general criminal jurisdiction over offenses committed within a certain district, should hold a particular act to be a public offense which is not by the law made an offense, and proceed to the arrest and trial of a party charged with such acts, or should sentence a party convicted to a greater punishment than that authorized by the law upon its proper construction, no personal liability to civil action for such acts would attach to the judge, although these acts would be in excess of his jurisdiction or of the jurisdiction of the court held by him, for these are particulars for his judicial consideration, whenever his general juris-
46 diction of the subject-matter is invoked. Indeed, some of the most difficult and embarrassing questions which a judicial officer is called upon to consider and determine relate to his jurisdiction or that of the court held by him, or the manner in which the jurisdiction shall be exercised. And the same principle of exemption from liability which obtains for errors committed in the ordinary prosecution of a suit where there is jurisdiction of both subject-matter and person, applies in cases of this kind and for the same reasons."

The distinction here made between acts done in excess of jurisdiction and acts where no jurisdiction over the subject-matter exists, was taken by the Court of Queen's Bench in the case of Ackerly v. Parkinson (3 Maule and Selwyn, 411). In that case, an action was brought against the Vicar General of the Bishop of Chester, and his Surrogate, who held the Consistorial and Episcopal Court of the Bishop, for excommunicating the plaintiff with a greater excommunication of contumacy in not taking upon himself the administration of an intestate's effects to whom the plaintiff was next of kin. The citation issued to him being void, and having been so adjudged, the question presented was whether, under these circumstances, the action would lie. The citation being void, the plaintiff had not legally been brought before the court, and the subsequent proceedings were set aside upon appeal on that ground. Lord Ellenborough observed, "that it was his opinion that the action was not maintainable, if the ecclesiastical court had general jurisdiction over the subject-matter, although the citation was a nullity, and said that no authority had been cited to show that the judge would be liable to an action where he has jurisdiction, but has proceeded erroneously, or, as it is termed, inverso ordine."

Mr. Justice Blanc said "that there was a material distinction
47 between a case where a party comes to an erroneous conclusion in a matter over which he has jurisdiction, and a case where he acts wholly without jurisdiction, and held that where the subject-matter was within the jurisdiction of the judge, and the conclusion was erroneous, although the party should, by reason of the error, be entitled to have the conclusion set aside, and to be restored to his former rights, yet he was not entitled to claim compensation in damages for the injury done by such erroneous conclusion as if the court had proceeded without jurisdiction.

"The general principle which seems to be established by this decision is that in a court of superior or general jurisdiction which has the slightest claim to jurisdiction over the subject-matter, a judge will not be held

liable in a civil action for an erroneous decision in favor of such jurisdiction, neither will he be held liable where he has jurisdiction of the subject-matter for excess of punishment, no matter how great such excess may be. Thus, in the present case, the plaintiff being convicted, and the defendant, as presiding judge of the court in which such conviction was had, sentenced the plaintiff to a punishment in excess of that allowed by law, yet he was not liable in a civil action to the plaintiff for any damages which he might have sustained by reason of such excessive sentence, because the defendant had jurisdiction both of the subject-matter and the person of the plaintiff.

"But if there is a clear absence of all jurisdiction, and this want of jurisdiction is known to the judge, no excuse is permissible, and he will be held liable in a civil action."

If, therefore, there was a clear absence of jurisdiction in the defendant to pass the second sentence, and this want of jurisdiction was known to him, this action will lie.

48 The United States court, in deciding the question of the validity of the second sentence, used the following language: "We are of opinion that when the prisoner, as in this case, by reason of a valid judgment, had fully suffered one of the alternate punishments to which alone the law subjected him, the power of the court to punish further was gone; that the principle we have discussed then interposed its shield and forbade that he should be punished again for that offense. The record of the court's proceedings at the moment the second sentence was rendered showed that in that very case, and for that very offense, the prisoner had fully performed, completed, and endured one of the alternate punishments which the law prescribed for that offense, and had suffered five days' imprisonment on account of the other. It thus showed the court that its power to punish that offense was at an end. Unless the whole doctrine of our system of jurisprudence, both of the Constitution and of the common law, for the protection of personal rights, in that regard, are a nullity, the authority of the court to punish the prisoner was gone. The power was exhausted; its further exercise was prohibited. It was error; but it was error because the power to render any further judgment did not exist."

In another part of the opinion the Supreme Court say, "that in the present case the court could render no second judgment against the prisoner. Its authority was ended. All further exercise of it in that direction was forbidden by the common law, by the Constitution, and by the dearest principles of personal rights, which both of them are supposed to maintain."

It is true that Lord Chief Justice DeGray, in the case of Miller v. Serl (2 Bl. Rep., 1141), said, "that the judges of the courts of general jurisdiction were not liable to answer personally for their errors in judgment. The protection as to them is absolute and universal. With respect to the inferior courts, it is only while they act within their jurisdiction."

49 It will be seen by the case of Bradley v. Fisher, that the proposition, as stated by Lord Chief Justice DeGray, cannot be maintained as broadly as he has laid it down, and that there may be cases where judges of courts of general jurisdiction will be held personally liable, not for errors in judgment, but for passing judgment at all in a case where it was clear they had no jurisdiction.

This view of the law is sustained by the case of Houlden v. Smith (14 Q. B., 841). In that case it was held that a judge of a court of record is answerable in an action for an act done by his command when

he has no jurisdiction, and is not misinformed as to the facts on which jurisdiction depends. The facts of that case appear to be as follows: The plaintiff, who dwelt and carried on a business at Cambridge, out of the jurisdiction of the Spilsby court, was sued in that court by leave of the judge, under Stat. 9 and 10 Vict., C. 95, S. 60, the cause of action having arisen within the jurisdiction of the court, and judgment was duly obtained against him. Afterwards, while the plaintiff still dwelt and carried on business at Cambridge, a judgment summons was issued by order of the judge of the Spilsby court, under section 98, calling upon the plaintiff to be examined as to his estate and effects, and the plaintiff not appearing, the judge, knowing the facts, but believing, nevertheless, that he had authority, made an order that the plaintiff should be committed for contempt. The court say, "Although it is clear that the judge of a court of record is not answerable at common law, in an action for erroneous judgment, or for the act of any officer of the court wrongfully done, not in pursuance of, though under color of a judgment of the court, yet we have found no authority for saying that he is not answerable in an action for an act done by his command and authority, when he has no jurisdiction."

In the case now under consideration, the plaintiff having been convicted, and suffered and performed the full penalty which the
50 law imposed upon his offense, was entitled to his liberty, and had the lawful right to assert his freedom by force after that sentence had been vacated. Under these circumstances, without any authority whatever, and in direct violation of and disregard for those rights which were guaranteed to the plaintiff, both by the common law and the constitution, he was sentenced to imprisonment for an offense which he had already expiated; which facts were known to the defendant at the time of pronouncing such sentence. At the time that Edward Lange was present in court, when the second sentence was pronounced, neither the marshal nor any other person had the slightest scintilla of right to restrain him of his liberty, because of the offense for which he had been convicted; and in the eye of the law he was as free as any of the persons who happened to be spectators in the court-room on that day. And I do not think that it will be argued that a judge of a court of general jurisdiction can of his own will and volition, without observing any of the forms required by law, imprison with impunity any of the persons who happen to be present within his court. Yet, if the judgment of the United States Supreme Court in this case is sound, this is precisely what was done to the plaintiff by the defendant. I know that it is necessary for the independence of the judiciary that the broadest shield of protection should be thrown around them in respect to their official acts; but this does not require that they should be exempt from all penalties when they clearly act without any claim to jurisdiction.

If the United States circuit court, as it has frequently been held to be, is a court of limited jurisdiction, then it would appear that under all the authorities, the defendant having acted, in passing the second sentence, without jurisdiction, he is liable in trespass.

I am aware that, assuming the United States circuit court to be one of general jurisdiction, the question is not free from difficulty;
51 but I am of the opinion, after a careful examination of the authorities, that a judge of a court of general jurisdiction, who attempts to enforce a judgment which he knows to have been satisfied, makes himself liable to an action.

The demurrer, therefore, must be overruled, with leave to the defendant to answer on payment of costs.

52 At a special term of the supreme court, held at the chambers in the court-house, in the city of New York, the 23d day of October, 1876.

Present, Hon. Charles Donohue, justice.

EDWARD LANGE
*agst.*
CHARLES L. BENEDICT.

On reading and filing the consent of Tracy, Catlin & Brodhead hereto appended, it is ordered that Tracy & Catlin be, and they are hereby, substituted as attorneys for the defendant herein.

A copy.

WM. WALSH, *Clerk.*

We consent to the entry of the foregoing order. Dated October 18, 1876.

TRACY, CATLIN & BRODHEAD,
*Defendant's Attorneys.*

53 At a general term of the supreme court, held at the court house, New York, on the 17th day of October, 1876.

Present, Hon. Noah Davis, P. J.; Hon. John R. Brady Hon. Charles Daniels, J. J.

EDWARD LANGE, RESPONDENT,
*agst.*
CHARLES L. BENEDICT, APPELLANT.

This cause coming on to be heard in due order upon the calendar, on hearing Hon. Benjamin F. Tracy, of counsel for appellant, and Mr. Wm. Henry Arnoux, of counsel for the respondent, and due deliberation having been thereon had:

It is ordered that the order appealed from be and the same is hereby reversed; and, the respondent coming into court and declining to amend the complaint:

It is further ordered that the defendant have judgment absolute in his favor against the plaintiff, with costs.

A copy.

WM. WALSH, *Clerk.*

54 *Judgment.—October 25th*, 1876.

New York supreme court, city and county of New York.

EDWARD LANGE
*agst.*
CHARLES L. BENEDICT.

The order of the court made at general term reversing the order of the special term, by which the demurrer was overruled, and the plaintiff having come into court, and having declined to amend his complaint, and said general term having ordered judgment absolute in favor of defendant with costs:

Now, on motion of Tracy & Catlin, attorneys for said defendant, it is ordered and adjudged that the complaint herein be, and the same here-

by is, dismissed, and that the defendant have judgment herein against the plaintiff for his costs and disbursements, amounting to the sum of twelve hundred and five dollars and thirty-nine cents.

New York supreme court, city and county of New York.

EDWARD LANGE
*agst.*
CHARLES L. BENEDICT.

55 GENTLEMEN: Take notice that the plaintiff herein hereby appeals to the court of appeals from the order of the general term of this court, of date the 17th day of October, 1876, reversing the order of the special term of this court by which the demurrer in this action was overruled, and giving judgment absolute in favor of defendant and against the plaintiff herein, and from the judgment entered on said order on the 25th day of October, 1876, in favor of said defendant and against the plaintiff, for twelve hundred and five dollars and thirty-nine cents, and from each and every part of said order and judgment.

New York, October 25th, 1876.

ARNOUX, RITCH & WOODFORD,
*Attorneys for Plaintiff.*

TO TRACY & CATLIN,
*Attorneys for Defendant.*
WM. WALSH, *Clerk.*

STATE OF NEW YORK,
*City and County of New York, ss:*

I, William Walsh, clerk of the supreme court in and for said county, do hereby certify that the foregoing consists of certified copies of the notice of appeal and the judgment-roll on file in my office.

In witness whereof I have hereunto set my hand and affixed my official seal this 28th day of October, A. D. 1876.

[SEAL.] WM. WALSH, *Clerk.*

56 *Opinion.*

New York supreme court.

EDWARD LANGE, RESPONDENT,
*agst.*
CHARLES L. BENEDICT, APPELLANT.

Appeal from order overruling demurrer to complaint.

B. F. Tracy, for appellant.
Wm. Henry Arnoux, for respondent.

Daniels, J.:

The action has been brought to recover for the unlawful imprisonment of the plaintiff, by the defendant, who is the United States district judge for the eastern district of New York. It appears by the complaint, and the copies of the papers annexed to the showing the proceedings had, that the plaintiff was indicted, tried, and convicted at a term of the circuit court of the United States for the southern district of New York, held by the defendant, of the crime of larceny, committed by stealing

mail-bags, of the value of less than twenty dollars. By the act of Congress defining the offence and its punishment, that rendered the plaintiff liable to be sentenced to pay a fine not exceeding two hundred dollars, or to be imprisoned not exceeding one year. In finally disposing of the case, the defendant imposed both these punishments upon him. The plaintiff paid the fine, and applied to be released from custody by means of the writ of habeas corpus, because he had suffered one of the alternative punishments provided for the offence. That was denied, and the court, by order entered, directed the sentence which had been pronounced to be va-
57 cated and then sentenced the plaintiff to one year's imprisonment upon his conviction. He had then been in custody five days, and afterwards applied to the circuit court of the United States, when the circuit judge, Lewis B. Woodruff, the district judge of the southern district, Samuel Blatchford, and the defendant were upon the bench presiding, for a writ of habeas corpus to discharge him from further imprisonment, because of its illegality. The application was heard, and, after being considered, was denied. He then applied for another writ of habeas corpus, which together with a writ of certiorari was issued by the Supreme Court of the United States. And upon the hearing had on the return made to both writs, the plaintiff was discharged from custody, the court holding that he could not lawfully be sentenced to imprisonment after what had transpired in the case. (Ex parte Lange, 18 Wallace, 163.) After that, this action was brought against the defendant for false imprisonment; and a very able argument has been made by the learned counsel for the plaintiff, in favor of maintaining it; but the report of the case itself, as it was considered and decided by the Supreme Court of the United States, would seem to be sufficient to negative the assertion that such an action can be maintained upon the facts in the case. The sentence was changed by the same court at the same term during which the first sentence was pronounced. And a learned and extended examination by the court of last resort was found necessary for the purpose of maintaining the position that the change was improperly and unlawfully made. The opinion in which that view was sustained, and it was done by one of the ablest judges of the present time, proved unsatisfactory and unconvincing to two members of that learned court. And its conclusions were controlled by one of those two, in an opinion rarely if ever excelled in the thoroughness of its investigations and researches, or the vigorous logic tracing and exhibiting their results.

Under these circumstances it cannot with the least pro-
58 priety be held that the point presented to the defendant was not a doubtful one, or that its decision and determination did not require the exercise of judicial functions. The examination and discussion which it received when it was finally decided most conclusively establishes the contrary. And that of itself should be deemed to be sufficient to shield the defendant from personal liability. The law was, to say the least, in such a condition as to afford ostensible support to each side of the proposition presented, and to render the development of a satisfactory and consistent conclusion intricate and difficult. Different minds could very well, and would very naturally, be led to different results concerning the propriety of the course pursued in the disposition of the case by the circuit court. Two other judges of great learning and experience in that court held, with the defendant, that the proceedings were not invalid. And the plausibility of their decision was finally corroborated by the opinion of Mr. Justice Clifford. If with what weight of authority in support of the action that was taken, a

judge could be held personally liable for its consequences, judicial protection would be at once destroyed, and the utility of the courts practically subverted. For the result would finally be that all unauthorized determinations arising out of misapprehensions of the law, or miscalculations of the true weight of authority, affecting the person or the property of the defeated party, would furnish a cause of action for trespass or false imprisonment. And no court could possibly be protected against such liability; for even those of last resort not unfrequently find it necessary to re-examine, distinguish, and finally overrule their own decisions. And it certainly is no discredit to the learned tribunal by whose mandate the plaintiff was set at liberty, to say that it has not always found itself at liberty to disregard that alternative. The law is the most complicated of all practical sciences. And it cannot fail to become more so, as the intricacies of business and enter-
59 prise increase and advance. Differences of opinion upon legal subjects cannot be avoided, even by the most patient attention and laborious investigation. And when they do arise, erroneous conclusions are required to be excused as the natural consequences of human fallibility.

When a party has been brought before a court of justice in a legal manner, and circumstances are presented requiring a decision to be made, the tribunal making it cannot be deprived of protection because it may afterwards, upon further and fuller investigation, turn out to have been erroneous. That was the case of the plaintiff; he had been convicted of a crime punishable by fine or imprisonment. The court inadvertently imposed both. When its consideration was directed to the misapprehension under which the sentence had been pronounced, an effort was made to correct it in such a manner as to comport with what was considered to be just in the case; and that correction, it was held, could be and was designed to be made.

The emergency which had arisen required a decision to be made. The judge could neither avoid it nor escape from it. His duty required him to act, and he had the power to decide, and he did so according to the best of his judgment. And for that he cannot upon any sound principle of accountability be held to be personally liable. He had for that purpose jurisdiction of the person and the subject-matter. Both were before him, and his decision was necessary. He could not avoid making it if he would; and, as it turned out, he decided erroneously.

The rule by which judicial officers have been exonerated from liability for the consequences of their decisions has gone much farther than is required for the protection of the defendant. In Yates v. Lansing (5 Johns., 282), the assertion was approvingly mentioned "that no authority or semblance of an authority had been urged for an action against a judge of record for doing anything as judge; that this
60 was never before imagined, and no action would lie against a judge, for a wrongful commitment, any more than for an erroneous judgment." (Id., 294.) And that principle was affirmed afterwards in the same case by the court of errors. (9 Id., 396.) And to the same effect are Jenkins v. Waldron (11 Id., 114); Vanderheyden v. Young (Id., 150); Wilson v. Mayor of New York (1 Denio, 595); Weaver v. Devendorf (3 Id., 117); Bradley v. Fisher (13 Wallace, 335). In the case of the Rochester White Lead Co. v. City of Rochester (3 Com., 464), it was said that "whenever duties of a judicial nature are imposed upon a public officer, the due execution of which depends upon his own judgment, he is exempt from all responsibility by action for the motives which influence him and the manner in which such duties are

performed." (Id., 466.) To secure this immunity, it is sufficient that a case requiring judicial action is presented to the judge. (Hannan v. Brotherson, 1 Denio, 537; Landt v. Hills, 19 Barb., 283.)

The defendant's right to exemption from personal liability in this case rests upon still more cogent circumstances than those already relied upon. For the decisions of the United States Supreme Court, to which he was bound to subordinate his action, had previously affirmed the existence of the authority which he exercised in changing the punishment. (Cheangkee v. U. S, 3 Wallace, 321; Basset, v. U. S., 9 Id., 38.) In the last case the person proceeded against had pleaded guilty to an indictment and had been sentenced to imprisonment, and was actually sent to prison in pursuance of the sentence. A few days after that he was brought again into court by means of a writ of habeas corpus, and on the district attorney's motion the judgment was set aside, and the prisoner had leave to withdraw his former plea of guilty. This was all done during the same term, as it was in the case of the plaintiff, and the court unanimously held it to be proper. That was not done because the proceeding was favorable to the defendant, but for the sole reason that during the same term the court had full
61 power to control and change its judgments. And that subject was very fully discussed and the authorities cited upon which the principle rested by Mr. Justice Clifford, in his opinion in Ex parte Lange (18 Wallace, 191-5). And a decision of the same nature was made after the execution of the sentence had commenced, by reducing the term for which transportation had been provided in the case of Rex v. Price (6 East, 323, 327). The circuit court had no power even if it had the disposition to gainsay or deny the accuracy of the legal principle sanctioned by the case of Basset v. U. S., supra. It not only had the power, but it was bound to conform its action to the principle maintained by that authority. That was as obligatory upon the defendant at the time as positive legislation would have been. And he appears to have acted under its sanction. At that time his action was strictly lawful, and it cannot be denied but that the authority of that case then afforded him complete protection for the change made in the sentence, and it would probably be conceded to continue to do so, had it not been since impaired as authority by the final decision made in the plaintiff's favor. Under the doctrine of that case he was vested with clear jurisdiction over the subject-matter brought before him, and it at the same time indicated the manner in which it should be exercised by him. That it was, as the learned justice stated in his opinion, in the plaintiff's favor, it had been decided "in general terms without much consideration" (18 Wallace, 167) could not change its effect as authority when it was followed by the circuit court. The defendant presiding there could not then with the least propriety have assigned that as a reason for disregarding it as authority. The decision was then in full force as it had been made. It was promulgated by the court in its published reports as a proper exposition of the law, and it would be exceedingly unjust under such circumstances to render the defendant's protection dependent upon the views afterwards taken to correct it by the court
62 that had pronounced it. That tribunal could correct it, as it has, when it was discovered to be wrong, but he had no such power over it. It was his duty to conform his official action to it, and for that it cannot be that he can be held personally liable because the authority of the decision has since been superseded by another. His conduct, on the other hand, should be so far sustained as to secure him immunity, the same as it would have been if a statute had existed in

favor of it, which the legislature afterwards repealed. For future purposes the repeal obliterates the law the same as though it had never been enacted. But acts previously performed are still maintained by force of the law which sanctioned them at the time of their occurrence. This principle is too familiar to require the citation of authorities for its support, and all its reasons are applicable to the case now before this court.

The principle invoked for the support of this action would sanction suits against judges for their official acts in a large class of cases if it should receive the approval of the courts. It would be difficult to exclude from its comprehension any cases where imprisonment should be pronounced or continued, which might afterwards be declared to be unwarranted by the final view taken of the law. No authority has gone so far as that, and it is not probable that any will be hereafter so widely extended. The settled principle, on the contrary, is, that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions without apprehension of personal consequences to himself. Liability to answer to every one who might feel himself aggrieved by the action of the judge would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful. (Bradley v. Fisher, supra, 347.)

The defendant cannot be held liable for the consequences of the imprisonment following the change made in the sentence. He acted
63 judicially in making it. The exigency required him to decide, and that included the power to decide wrong without liability to himself particularly, as it practically required the abrogation of an existing and for the time controlling authority to render the error apparent. It is entirely evident that he was actuated solely by the motive of performing his duties for the best interests of the public, by subjecting the plaintiff to what was believed to be no more than a proper measure of punishment for the offence of which he had been convicted. That he considered his acts to be fully warranted by the decision of the tribunal from which he was bound to receive the law is clearly shown by what the case shows to have transpired. And in that view he was supported by other eminent judges. To hold him liable for a change afterwards made in it, would seem to be hardly less than a positive perversion of justice.

That he cannot be held liable for the five days' imprisonment under the sentence as it was at first pronounced follows from the view which was adopted in the decision of the habeas corpus. For it was then distinctly held that "the judgment first rendered, though erroneous, was not absolutely void. It was rendered by a court which had jurisdiction of the party and of the offence on a valid verdict. The error of the court in imposing the two punishments mentioned in the statute, when it had only the alternative of one of them, did not make the judgment wholly void." (Ex parte Lange, 18 Wall., 174.) And as the defendant had the same jurisdiction over the subject when the plaintiff's first sentence was vacated and the last one was pronounced, he is equally entitled to the same protection as to this portion of the case. The sentence under the circumstances was not void. It was simply voidable by the operation of the restriction subsequently imposed upon the principle established by the case of Basset v. U. S., supra, and that effect was first given to it long after the power of the defendant's court had been exhausted.

64 The order should be reversed, and an order entered sustaining the demurrer, with the usual leave to the plaintiff to amend on payment of costs.

I concur.

J. R. B.

Davis, P. J., taking no part in the decision.

65 *Costs.*

N. Y. sup. court, city and county of New York.

EDWARD LANGE, APPELLANT,
*against*
CHAS. L. BENEDICT, RESPONDENT.

| COSTS. | | |
|---|---|---|
| Costs before notice of trial | | |
| " after " " | | |
| Additional defendants served | | |
| Trial fee; issue of fact | | |
| " issue of law | | |
| Allowance by statute | | |
| " " court | | |
| Motion | | |
| Order of publication | | |
| Trial occupied more than two days | | |
| Appointment of guardian of infant defendant | | |
| Examination of party before trial | | |
| Attending and taking deposition de bene esse | | |
| Drawing interrogatories to annex to commission | | |
| Making and serving case | | |
| " " amendments to case | | |
| " " case of more than 50 folios | 60 | |
| Term fees | | |
| Motion for new trial, special term | | |
| Proceedings before and after granting new trial | | |
| Applic'n for judg't on special verdict before argum't | | |
| Applic'n for judg't on special verdict for argument | | |
| Appeal to general term before argument | | |
| " " " for argument | | |
| " court of appeals before argument | 30 | |
| " " " for argument | 60 | |
| Preparing case on appeal to court of appeals | | |
| Damages in court of appeals for delay | | |
| Interest on verdict | | |
| Disbursements | 53 | 58 |
| Total | 203 | 58 |
| | 30 | 00 |
| | 173 | 58 |

| DISBURSEMENTS. | | |
|---|---|---|
| Paid for register's search | | |
| " county clerk's search | | |
| " loan commissioner's search | | |
| " U. S. district court search | | |
| " U. S. circuit court search | | |
| " tax search | | |
| " referee's report | | |
| Referee's fees | | |
| Commissioner's fees | | |
| Clerk's fees on filing notice of pendency of action | | |
| Clerk's fees on entering judgment | 1 | |
| Affidavits and acknowledgments | | 50 |
| Serving copy summons and complaint on ——— ———, defendant | | |
| Satisfaction piece | | |
| Transcript and filing | | 20 |
| Certified copy judgment | | 50 |
| Certified copies orders | | |
| Postage | | |
| Jury fees | | |
| Stenographer's fees | | |
| Sheriff's fees on execution | 1 | 38 |
| " " attachment | | |
| " term fees | | |
| Coroner's fees on execution | | |
| Extract from minutes | | |
| Paid printing cases | | |
| " " points | 44 | |
| " copy stenographer's minutes | | |
| " copies following papers | | |
| Remittitur expressage | 6 | |
| Attendance of following witnesses: | | |
| DAYS | | |
| | 53 | 58 |

Adjusted on appearance, at $173.58.
M'ch 27, 1878.

HENRY A. GUMBLETON, *Clerk.*

(On the margin:) $30 off.

COUNTY OF KINGS, *ss:*

John P. Hudson, managing clerk of Tracy & Catlin, the attorneys for the defendant in the above-entitled action, being duly sworn, says

that the foregoing disbursements have been made in this action, or will be necessarily incurred therein, to the best of his knowledge and belief.

JOHN P. HUDSON.

Sworn to before me, March 22d, 1878.

GEORGE HICKS,
*Notary Public, Kings Co.*

66 (Indorsed:) N. Y. supreme court, city & county of New York. Edward Lange, appellant, against Charles L. Benedict, respondent. Costs and notice of adjustment.

Take notice that the within is a copy of the items of the costs and disbursements in the within action, and that the same will be adjusted by the clerk of the supreme court, at his office in New York City, on the 27th day of March, 1878, at 10½ o'clock in the forenoon of that day, and the amount inserted in the judgment roll.

Yours, &c.,

TRACY & CATLIN,
*Attorneys for Def't*, 189 *Montague St., Brooklyn.*

E. 23.

Due service of the within costs, and notice of adjustment is hereby admitted.

Dated March , 1878.

67 At a special term of the supreme court, held at the court-house in the city and county of New York, on the 26th day of March, 1878:

Present, honorable Abraham K. Laurence, justice.

EDWARD LANGE
*vs.*
CHARLES L. BENEDICT.

Edward Lange, having appealed to the court of appeals from the judgment of the general term of this court, bearing date the 17th day of October, 1876, which judgment was signed by the clerk of this court, and duly entered in his office, on the 25th day of October, 1876, and said court of appeals having affirmed the judgment of this court, now, on reading and filing the remittitur from the said court of appeals, and on motion of Tracy and Catlin, attorneys for the respondent, it is ordered that the judgment of the court of appeals be, and the same is hereby, made the judgment of this court, and that the respondent, Charles L. Benedict, have execution thereon.

Enter.

A. K. L.

(Indorsed:) N. Y. supreme court, New York County. Edward Lange vs. Charles L. Benedict. Order for judgment. Tracy & Catlin, def't's att'ys, 189 Montague street, Brooklyn. Filed M'ch 26, 1878.

68 *Judgment, April 2d*, 1878.

N. Y. supreme court, city & county of New York.

EDWARD LANGE
*vs.*
CHARLES L. BENEDICT.

The plaintiff having appealed to the court of appeals from the judg-

ment of the general term of this court, which was duly entered on the 25th day of October, 1876, and said court of appeals having affirmed said judgment, and the remittitur of said court of appeals having been duly filed and made the judgment of this court, and the costs of the defendant having been duly taxed at one hundred and seventy three dollars & fifty cents:

Now, on motion of Tracy & Catlin, attorneys for said defendant, it is adjudged that the judgment of this court be, and the same hereby is, affirmed, and that the defendant, Charles L. Benedict, recover of
69 the plaintiff, Edward Lange, the sum of one hundred and seventy-three dollars & fifty-eight cents, his costs and disbursements.

(Indorsed:) N. Y. supreme court, city & county of New York. Edward Lange vs. Charles L. Benedict. Judgment-roll. Tracy & Catlin, def't's att'ys, 189 Montague street, Brooklyn. Costs, $173.58. W. A. B. Filed April 4, 1878, 11 h. a. m.

(Indorsed:) U. S. Supreme Court. Edward Lange, app'l't, vs. Charles L. Benedict, resp'd't. Return. Arnoux, Ritch & Woodford, att'ys for app'l't.

(Indorsement on cover:) No. 826. Edward Lange, plaintiff in error, vs. Charles L. Benedict. New York c't of appeals. Filed 8th October, 1878.

# U. S. Supreme Court.

OCTOBER TERM, 1878.

**No. 826.**

EDWARD LANGE,
*Plaintiff,*

*vs.*

CHARLES L. BENEDICT,
*Defendant.*

**In Error to the Court of Appeals of the State of New York**

# Brief for Defendant,

ON MOTION TO DISMISS.

B. F. TRACY,
*Counsel for Defendant,*
189 Montague Street,
Brooklyn.

BROOKLYN:
UNION-ARGUS STEAM BOOK AND JOB-PRINTING ESTABLISHMENT.
1879.

# U. S. Supreme Court.

EDWARD LANGE,
*Plaintiff in Error,*
*vs.*
CHARLES L. BENEDICT,
*Defendant in Error.*

*October Term*, 1878.
*No.* 826.

**Brief for Defendant in Error. on motion to Dismiss**

This is a motion to dismiss, for want of jurisdiction, a writ of error issued to bring up, for the purpose of review in this Court, a judgment rendered by the Court of Appeals of the State of New York.

The following are the facts appearing on the record upon which the motion depends:

Edward Lange, the plaintiff in error, was indicted under § 290 of the act of Congress passed June 8, 1872 (17 Stat. at Large, p. 320), now to be found in § 5475 of the Revised Statutes of the United States, wherein it is provided, among other things, that, in case of a conviction under that act, "the person offending shall be imprisoned not more than one year, or be fined not less than ten nor more than two hundred dollars."

The indictment (by virtue of § 5475, Revised Statutes of the United States) charged three distinct offences

created by the above-mentioned act of 1872. Upon this indictment a trial was had at the October term of the Circuit Court of the United States for the Southern District of New York, and a general verdict of "guilty" rendered.

At the same term of the Court, and on the 3d of November, 1873, the Court sentenced the plaintiff in error to be imprisoned for the term of one year and to pay a fine of $200. Thereafter, at the same term of Court, the plaintiff in error procured a writ of *habeas corpus*, and, upon the return thereof, showed to the Court that he had caused the sum of $200 to be deposited with the Assistant Treasurer of the United States, at the city of New York, to the credit of the United States, as the fine imposed by such sentence, and thereupon claimed to be discharged, upon the ground that he had paid the fine imposed by the sentence, and, therefore, was not subject to further imprisonment. After a hearing, the Court dismissed the writ.

Thereafter, at the same term and same day, the Court, of its own motion, and for reasons not appearing on the record or necessary to be stated here, vacated the sentence which had been pronounced on the 3d of November, and, thereupon sentenced the prisoner anew to be imprisoned for the term of one year. A second *habeas corpus* was then applied for, and, after a hearing before Woodruff, Blatchford and Benedict, JJ., the application was denied.

Subsequently a third *habeas corpus* was issued by this Court, and the prisoner, thereupon, was released from custody. The opinion of the Supreme Court, delivered by Mr. Justice Miller, is reported, 18 Wallace, p. 163. Mr. Justice Clifford and Mr. Justice Strong dissented. The dissenting opinion of Mr. Justice Clifford is reported in 18 Wallace, at page 178.

After the release of the prisoner, he sued the Judge who held the Court at the time when sentence was passed upon him, in the Supreme Court of the State of

New York, to recover damages for a false imprisonment. The imprisonment complained of was that endured between the time of the passing of the second sentence and the time of the plaintiff's discharge by order of this Court.

The complaint contained a statement of most of the facts material to the controversy, and to it the defendant demurred. A hearing upon the demurrer was first had at the Special Term of the Supreme Court of the State of New York, at the city of New York, when the Court (Van Brunt, J.) gave judgment upon the demurrer in favor of the plaintiff. This judgment was reversed by the Supreme Court, at General Term (Davis, Daniels and Brady, JJ.). The plaintiff appealed to the Court of Appeals, and upon that appeal the judgment of the Supreme Court, at General Term, was affirmed, and the complaint dismissed.

This judgment of the Court of Appeals the plaintiff in error now seeks to have reviewed by this Court.

Before the Court of Appeals the contention of the defendant in error was as follows:

> *First.* The complaint shows the plaintiff charged with several offences against the United States, and his conviction of all the offences charged. The conviction is conceded to have been lawful. Upon such conviction the plaintiff became liable to the punishment imposed upon him by either or by both the sentences set forth in the complaint. There was, therefore, no false imprisonment.
>
> *Second.* If the record can be held to show a conviction of only one offence, then the first sentence was a nullity, in which case the second sentence was of course lawful.
>
> 1. It does not follow, says the Supreme Court of the United States (Opinion ex parte Lange, p. 176), because the Court had jurisdiction of

the person of the prisoner and of the offence, that these two facts make valid, however erroneous it may be, any judgment the Court may render in such case. On an indictment for libel a judgment of death or confiscation of property would be void.

2. If the first sentence be deemed a sentence for a single offence, then it inflicts a punishment not authorized by law; and whether void or voidable, the error affects equally each part of the sentence. How can it here be said that that portion of the sentence which imposes the fine is valid, while that which inflicts the imprisonment is invalid? And how can it be left to the prisoner to determine for himself which part shall become valid and which remain invalid? The sentence is an entirety, and must stand or fall as a whole, unaffected by the subsequent action of the prisoner. It cannot be avoided in part and affirmed in part, and that by the prisoner instead of the court.

*Third.* This is an action for false imprisonment. The imprisonment complained of is from the 8th of November, 1873, to the 29th of January, 1874. This period is embraced within the term of imprisonment as fixed by both sentences. The first sentence, therefore, if not vacated, renders the imprisonment lawful.

The first sentence was vacated, or it was not. If, as the plaintiff contends, the first sentence was valid and beyond the power of the Court to vacate it, then that sentence stands as the sentence of the Circuit Court, and, whether justified by the conviction or not, it subjected the plaintiff to imprisonment for one year; there consequently could be no false imprisonment by reason of the second sentence, inasmuch as during the period of his imprisonment the plaintiff was within the scope of the first sentence as well, and subject thereto.

In order to maintain this action, therefore, it must be conceded by the plaintiff that the first sentence was lawfully vacated.

*Fourth.* The first sentence was vacated. That sentence having been expunged from the record, the second sentence when pronounced was the only sentence. The record, therefore, shows to this Court a lawful conviction and a sentence pronounced at the same term imposing a punishment lawful for a single offence.

It is by this record that the plaintiff's case must stand or fall, and the record shows the imprisonment complained of to have been lawful.

*Fifth.* The exercise of the power to vacate a sentence in cases where the sentence is in part executed does not violate the constitutional provision which forbids that one shall be twice punished for the same offence.

1. The application of the constitutional principle relied upon by the plaintiff was rejected by the Supreme Court in the plaintiff's case, where the Court declares that "it is not necessary in this case to insist * * * that when a party has had a fair trial before a competent court and jury, and has been convicted, that any excess of punishment deprives him of liberty or property without due course of law." (18 Wal., p. 170.)

It was also considered and rejected by the Court of Appeals of this State, in Ratzky vs. People, 29 N. Y., p. 124.

2. No sound distinction can be made between the plaintiff's case and other cases of sentences partly executed, by declaring that the payment of the fine expiated his crime, because it was a suffering of "one of the alternative punishments to which alone the law subjected him."

There is no such thing as an "alternative punishment"—the statute makes none and this sentence made none. The conviction of the plaintiff rendered him subject to such punishment as should be fixed by the Court. The statute creating the offence does not fix the punishment, much less an "alternative punishment"; nor does it declare that suffering a fine shall expiate this crime. The statute simply

limits the power of the Court to certain kinds of punishments and within certain bounds as to extent.

What would expiate the crime in this case rested in the conscience of the Court, and is only shown by the sentence of the Court in the case. The only punishment to which the plaintiff ever became subject must therefore be found in the sentences pronounced upon him; and the punishments there imposed he has never suffered.

3. A sentence is a judgment of the Court, but the judgment in a criminal case differs from the judgment in a civil case, in that it must contain a determination in respect to the kind as well as the amount of punishment, made, not by the jury, nor by the convict, but by the Court. It sounds strange to say that when a Court, in pronouncing sentence, leaves unperformed the duty imposed upon it by the statute, of selecting between two kinds of punishments, then the convict may determine that question himself, and by electing to be punished by fine deprive the Court of all power to proceed further in the premises.

*Sixth.* The proposition that the second sentence imposed upon the plaintiff was void is made to depend upon the fact that the fine which formed a part of the first sentence has been paid. Payment of the fine has, it is said, expiated the crime. But the fine was never paid.

This appears by the complaint; and it was also apparent at the passing of the second sentence.

*Seventh.* The United States Supreme Court did not determine that the plaintiff was falsely imprisoned, but the contrary.

*Eighth.* So far as the liability of the defendant is concerned, the legality of his acts must be determined by the law, as it then stood declared.

According to that law, as declared by the Supreme Court of the United States, the legality of the second sentence would not be affected by the fact that a previous valid sentence, under which the accused had suffered punishment, had been made.

*Ninth.* The act of the defendant, in pronouncing the judgment of the Circuit Court of the United States, upon the conviction of the plaintiff then standing on the records of the Court, was a judicial act, and affords no right of action against the judge who happened to be holding the Court.

Neither malice nor corruption is here charged or suggested.

## FIRST POINT.

In order to give this Court jurisdiction to re-examine the judgment of a State Court, it must appear affirmatively that some federal question was necessarily involved in the determination sought to be reviewed.

This Court "does not assume jurisdiction to review the judgment of a State Court unless it clearly appears from the record that a question has been raised and passed upon which is within the cognizance of this Court." (Klinger vs. State of Missouri, 13 Wal., 262.) This record shows no federal question necessarily involved in the determination made by the Court of Appeals.

*a.* It is quite manifest that the Court of Appeals may have limited their action to the determination that the act complained of was a judicial act, and, for that reason, entailed no liability upon the judge. Such a determination would necessarily dispose of the whole case and compel a dismissal of the complaint.

*b.* That, in fact, the Court of Appeals decided no federal question, is shown by the opinion delivered in that Court. This Court, in some instances, looks

to the opinion of the Court below, for the purpose of ascertaining whether, in point of fact, a federal question was decided.

McManus vs. O'Sullivan, 91 U. S. R., p. 578.

*c.* The Supreme Court of the State, at General Term, decided: (1) That the act complained of was lawful, because authorized by the decision of this Court in Bassett's case. (9 Wal. 38.) (2) That whether lawful or not, the act complained of was a judicial act, and entailed no liability. (See opinion delivered by Daniels, J., reported 13 Blatch., p. 562.) The Court of Appeals limited its action to determining the latter of these two questions. (See opinion of Court of Appeals in the Record.)

*d.* This determination was made upon general principles by which courts determine the character of an act on considerations of public policy. Such determinations do not involve a federal question.

Tarver vs. Keach, 15 Wal., 67.

## SECOND POINT.

If it should be contended that the judgment sought to be reviewed draws in question the validity of an authority exercised under the United States, it is only necessary to notice that the decision sought to be reviewed is not against the validity of the authority exercised.

To give jurisdiction to this Court in such a case, the decision of the State Court must be against the validity of the authority.

§ 709, Revised Statutes of the U. S.

## THIRD POINT.

If this can be considered to be a case where "immunity was specially set up or claimed" under a commission held or authority exercised under the United States, still this Court has no jurisdiction, because the determination sought to be reviewed was in favor of the immunity. A determination in favor of such an immunity is not subject to be reviewed in this Court.

§ 709, Revised Statutes of the U. S.

## FOURTH POINT.

The appeal should be dismissed.

B. F. TRACY,

*Of Counsel for Defendant.*

# Supreme Court of the United States.

EDWARD LANGE,
*Plaintiff in Error,*
*vs.*
CHARLES L. BENEDICT,
*Defendant in Error.*

*No.* 826.

Please take notice that a motion will be made herein by the above-named defendant in error, at the opening of this Court, to be held at the Capitol in the city of Washington, D. C., on the 28th day of April, 1879, to dismiss, for want of jurisdiction, the writ of error issued to bring up, for the purpose of review in this Court, a judgment rendered herein by the Court of Appeals of the State of New York, and for such other and further relief as to this Court shall seem just and proper, besides costs.

Dated Brooklyn, April 5, 1879.

Yours, etc.,

B. F. TRACY,
*Counsel for Defendant in Error.*

To

Messrs. ARNOUX, RITCH & WOODFORD,
*Counsel for Plaintiff in Error.*

# U. S. Supreme Court

OCTOBER TERM, 1878.

**No. 826.**

EDWARD LANGE,

*Plaintiff in Error*

*vs.*

CHARLES L. BENEDICT,

*Defendant in Error*

In Error to the Court of Appeals of the State of New York.

## Brief for Plaintiff in Error,

ON MOTION TO DISMISS.

**WM. HENRY ARNOUX,**

*Counsel for Plaintiff in Error,*

32 PARK PLACE, NEW YORK.

# U. S. Supreme Court.

EDWARD LANGE,
*Plaintiff in Error,*

*against*

CHARLES L. BENEDICT,
*Defendant in Error.*

*October Term*, 1878.—
*No.* 826.

***Brief for plaintiff in error in opposition to defendant's motion to dismiss.***

The only ground stated in the notice of motion of the counsel for defendant in error is want of jurisdiction.

The cause comes into this Court on error from the Court of Appeals of the State of New York, the writ having been allowed by the Hon. Sanford E. Church, Chief Judge of that Court.

The action was brought by plaintiff to recover damages of defendant for false imprisonment under circumstances of an aggravated character, and which will be readily recalled by most of the members of this Court.

The plaintiff, on the 3d day of November, 1873, was sentenced to pay a fine *and* to be imprisoned for one year, in a prosecution wherein the utmost limit was fine *or* imprisonment. The fine was duly paid on the following day, and thereupon a writ of *habeas corpus* was sued out

and made returnable before said defendant as Judge of the Circuit Court, in which writ, and upon the hearing, it appeared that said fine had been paid, and thereupon, on the 8th day of November, 1873, the said Judge vacated said sentence.

Upon the same day after said sentence had been vacated, without any motion in the original action, or in any other action or proceeding, the said Judge, refusing to hear counsel on plaintiff's behalf, proceeded to inflict a new sentence of one year from the 8th day of November, 1873, upon defendant in the original proceeding and upon the original verdict as entered in the records of the Court by the direction of the Judge.

This Court, in 18 Wall., has sufficiently expressed the law relating to these acts.

The action of the defendant was legally brought before this Court for review in the October Term, 1873, and it made an order, dated the 13th day of January, 1874, adjudging that the second sentence had been pronounced without authority, and directed the release of plaintiff.

The plaintiff thereupon brought his action in the Supreme Court of New York against defendant upon the judgment of this Court, setting forth its adjudication as the basis and only foundation of an action against the defendant for false imprisonment.

To this complaint defendant demurred, thereby admitting, under the rules of practice and pleading in New York, that all the allegations of fact in the complaint were true.

Upon this demurrer the Supreme Court, at Special Term, directed judgment for plaintiff.

From this order the defendant appealed, and secured a reversal at the General Term, and upon appeal, the Court of Appeals affirmed the judgment of the General Term.

Upon this judgment the plaintiff brings this writ of error, and the papers were filed in this Court on the day of , 1878.

On the 5th day of April, 1879, defendant makes this motion to dismiss the appeal for want of jurisdiction.

In the Court of Appeals the plaintiff in error made the following points in addition to what had been submitted below:

*First.*—That as matter of technical pleading the demurrer must be overruled.

*Second.*—That the positions of defendant were unsound in law. These positions are those stated in the brief of the counsel for the defendant on this motion, and in support of this second point we relied upon the decision of this Court in *Ex parte* Lange, as we shall show hereafter.

*Third.*—That the reasoning and conclusion of the General Term are alike unsound and unwarranted by the law applicable to this case. "The law applicable to this case" was the case of *Ex parte* Lange.

*Fourth.*—That the Supreme Court of the United States, since the decision of the General Term herein, has taken occasion to restate and affirm the decision in *Ex parte* Lange, referring to the case of *Ex parte* Parks, 93 U. S. R., 18.

## POINTS.

### I.

From the foregoing review of the points of the plaintiff in error, and from the review of the points of the defendant in error, as stated by him in his moving brief herein,

it will be seen that the case wholly turned upon the decision of the Supreme Court of the United States on the matters underlying that decision in *Ex parte* Lange.

We claim that full faith and credit was not given to that decision, and these points make it plain that the defendant in error did not believe that this Court had made any decision that the State Court was bound to respect.

He reargued all the questions that had been passed upon by this Court.

Examine these points in brief; the *first* is: "There was no false imprisonment." This Court said there was, and discharged Mr. Lange. The *second* is: "The second sentence was lawful." This Court said it was void. The *third* is: "The first sentence, if not vacated, renders the imprisonment lawful." This Court denied that; but if it were so, the demurrer in this case now before the Court admits that he was imprisoned under the second sentence, and this question is out of the case. The *fourth* is: "That there is only one sentence, and that, the second and lawful. "This Court has disposed of that. The *fifth* is: "The second sentence does not violate the Constitution." The judgment of this Court is that it does. The *sixth* is: "That the fine was never paid." This Court had determined that to the contrary. The *seventh* is a restatement of the *first*. The *eighth* is: "That defendant's acts must be determined by the law as it then stood declared;" referring to the case of Bassett *v.* U. S., 9 Wall, 38, which this Court said was not in conflict with *Ex parte* Lange, but which Judge Daniels says in the General Term opinion (see opinion in record) was in conflict. We respectfully submitted to the Court of Appeals, and

now repeat that as this was a question exclusively of federal jurisdiction, Judge Daniels was bound by the decision of this Court. The Court of Appeals did not endorse Judge Daniels' opinion. The *ninth* point made by defendant is: "The act of defendant was a judicial act," and this Court has denied that.

In this hasty review we have shown that the entire argument was based upon the judgment of this Court.

Now it is a doctrine almost as old as this Court, that no subordinate Court can by any decision it can make nullify the judgments of this Court. And where this Court has pronounced judgment, that judgment must be obeyed and respected.

Did not this Court decide in effect, although not in words, that the defendant was a trespasser? It said that he had become *functus officio*, and his second sentence was void. The Court of Appeals, in an action based on that determination, says, in effect, that that is not the decision of the Court, or rather that they do not so understand that decision to have such meaning. Judge FOLGER says: "It is plausible to say that if an act sought to be defended as a judicial act has been pronounced without authority and void; it could not have been done judicially. But we have yet to learn that the eminent Court which used that language, in using that language in adjudging upon that case made upon that writ, would hold that the defendant did not act as a Judge in pronouncing the judgment, which was deemed without power to sustain it." Therefore, not having learned the decision of this Court, that Court decided that defendant did act as Judge, and foreshadowing their belief, that this was a question this Court would pass upon, we also appeal to this Court.

The judgment of this Court in *Ex parte* Lange was a judgment *in rem;* it was a proceeding, and not an action, and that judgment bound every one to the extent it was made. This action is based upon that judgment, precisely as a creditor's bill is based upon a preceding judgment.

If full faith and credit is not given—which means, if a construction is given which does not do justice under the determination of the Court, this Court can review, and under this power we claim that this Court has jurisdiction.

## II.

Any case that draws in question the power of a United States officer raises a federal question.

We do not question the validity of any act done within the scope of the Judge's authority; but we ask redress for an act done without authority; an act that was beyond his power. It is not an error of judicial judgment, but an assumption of power not conferred by law, and by which defendant became a trespasser. Although this Court will not assume jurisdiction to review the judgment of a State Court, unless it appears that there are questions raised that bring the case within its cognizance, yet where the power of a Judge has been questioned, and the decision has been in favor of such power, the Court will consider it as raising a federal question, and will not dismiss the writ.

If the Court can see a federal question raised, though raised somewhat obscurely, they will not dismiss for want of jurisdiction.

Pennywit *v.* Eaton, 15 Wall., 380.

In that case, the question was whether a United States Judge had authority to act. An action was brought in a State Court on a judgment in a Court in New Orleans, rendered by a Judge appointed by the Military Governor. The State Court held the judgment valid, thereby affirming the authority and action of the Louisiana Judge; and although such action was held valid by the State Court, yet this Court held that it could be inquired into here.

In that case the Judge must have derived his authority from the Constitution and laws of the United States, and the question was whether he had *power* to render the judgment which he gave.

In the case now before the Court, the same principle arises, and this Court has held, that the Judge had no power to give the judgment which was rendered.

In regard to the jurisdiction of this Court, it can not be material whether there was a total want of power to act, or want of power to give the particular judgment which has been held void. In either case it raises the federal question whether the Judge is acting judicially, or whether, so far as that act is concerned, he is not a Judge, and becomes a trespasser.

The case of Klinger *v.* State of Missouri, 13 Wall., 262, cited in defendant's brief is not in point. In that case it did not appear that the juror was rejected for refusing to take the oath required by the State law, and therefore the validity of the State statute was not drawn in question.

So in McManus *v.* O'Sullivan, 91 U. S., 578. All the questions raised were under State laws, and no federal question was presented or determined by the Court.

This case we also claim is to be decided on considerations of public policy, and is a federal question. That is, it is a question whether a man assuming to act as Judge, as a Federal officer, was in the performance of the act complained of such Judge or officer, or whether he was acting as an individual without *any authority* from the Government.

In the former opinion delivered in this Court, the Court say, "The Judge's power was exhausted;" his "authority was ended." Such being the case, he could not then have been a Judge so far as this act was concerned, but must have been acting as an individual outside of his office, and without any official authority.

This is not a case where the *validity* of his authority is drawn in question and the decision has been in favor of such authority, because this Court has expressly decided that he had no authority, and the Court of Appeals has attempted to overrule such decision.

The Supreme Court of the United States has decided in *Ex parte* Lange, that the defendant in pronouncing the second sentence upon the plaintiff was not a Judge; that "the authority of the Court to punish the prisoner was gone. The power was exhausted; its further exercise was prohibited. It was error, but it was error because *the power to render any further judgment did not exist.*" (18 Wall, 176). "The Court in the present case could render no second judgment against the prisoner. Its authority was ended. All further exercise of it was forbidden by the common law, by the Constitution, and by the dearest principles of personal right which both of them are supposed to maintain. . . . . The sentence of the Circuit Court

under which the petitioner is held a prisoner was pronounced without authority" (Ib. 178).

In *Ex parte* Parks, 93 U. S. R., 18, the doctrine of the case of *Ex parte* Lange was reaffirmed and the distinction between that which may be error for matters of judicial determination and for *want of power*, that is jurisdiction clearly pointed out. In Parks' case it was claimed that the Court below had no jurisdiction over the prisoner because he had been indicted for an offence not within the statute. This Court held that the Court below had judicially passed upon that question, and its determination was final and could not be reviewed. So that if the defendant in this action had the power judicially to pass upon the questions involved in the second sentence, then whether his determinations were correct or incorrect, this Court could not have interfered. This Court say: "It has always been held that a mere error in point of law committed by a Court in a case properly subject to its cognizance can only be reviewed by the ordinary methods of appeal or writ of error; *but where the proceedings are not only erroneous, but entirely void, as where the Court is without jurisdiction of the person or of the cause, and a party is subjected to illegal imprisonment in consequence*—the Superior Court or Judge invested with the prerogative power of issuing a *habeas corpus*, may review the proceedings by that writ and discharge from illegal imprisonment" (p. 21). *If the Court had jurisdiction and power* to convict and sentence, the writ can not issue to correct a mere error. . . . . *In Lange's case* we proceeded on the ground that when the Court rendered its second judgment the case was entirely out of its hands. It was *functus officio* in regard to it. *The judgment first rendered had been executed and*

*satisfied. The subsequent proceedings were therefore according to our view void"* (p. 23).

This case then effectually disposes of the second point made for the defendant in error, for the motion to dismiss.

But though that is all that need be said, it is not all that can be said.

The demurrer admits that the fine had been paid, and that at the time of the second sentence the fact of such payment was known to the Judge; that the imprisonment was under the second sentence; that such sentence was on the 13th day of January, 1874, adjudged by this Court to have been pronounced without authority; and "that the defendant wrongfully, willfully, and without just cause, provocation, or *jurisdiction*, falsely imprisoned and caused to be detained in prison the plaintiff."

Under these admissions the defendant can not claim protection under judicial immunity.

Nor is it a case where the validity of the officer's authority is drawn in question; that is, whether his action under his authority was regular; but it is a question whether, under the Constitution and laws of the United States, he was an officer of the Government in attempting to render the judgment he did. This is properly a question for the determination of this Court, and can not have a valid ultimate decision from any other tribunal.

If the Judge had in this case simply rendered a judgment beyond what the law allowed, as he did in the first instance, he would have been acting within the line of his authority; and being only an error in judgment, he would not have been liable.

But as his authority ended with the first judgment, he is placed in a very different position in regard to the second judgment. While in the first he would not be a trespasser; in the latter he clearly would be.

It is not a case where immunity can be claimed under a commission held, or authority exercised, under the United States, because his commission gave him no power or authority to act in such case.

The Judge's authority having ended, he had no more power to pass the sentence he did than any other person, and in attempting to do it was a trespasser.

Although the Court may not, on this motion, look into the merits of the question to ascertain and determine how far the defendant is liable to the plaintiff for his action, yet where the federal question whether the Judge, in rendering the judgment he did, was really a Judge or not, is before the Court, the writ of error will not be dismissed, and the Court will hold the cause for final argument, as was done in the case of Pennywit *vs.* Eaton.

## III.

The motion to dismiss should be denied.

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